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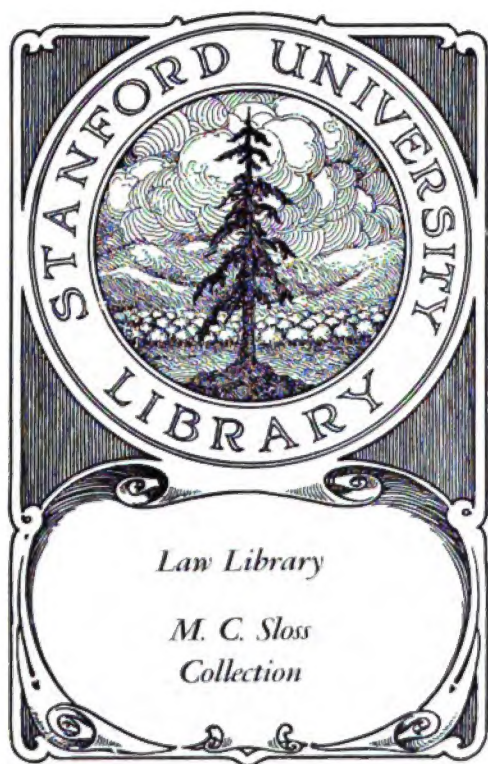
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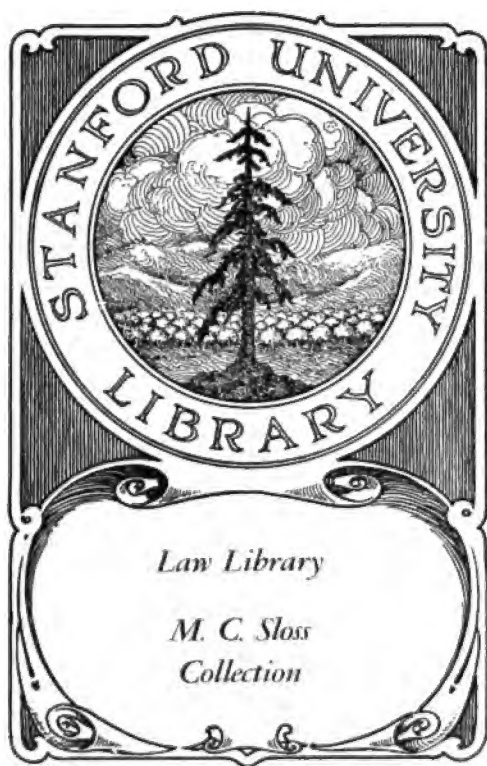
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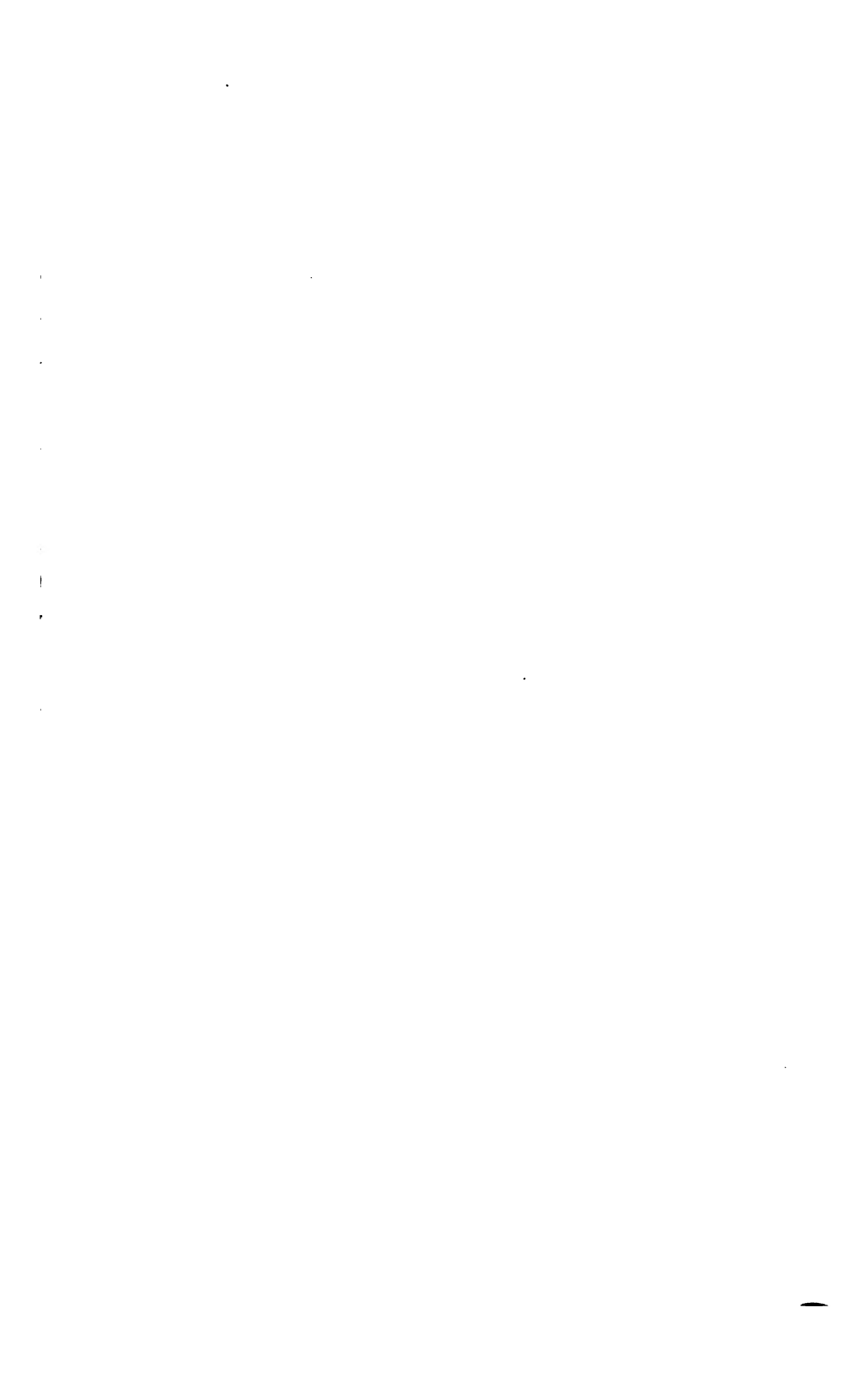


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THE  
**LAW JOURNAL**

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FOR 1804;

CONSISTING OF

*ORIGINAL COMMUNICATIONS ON  
LEGAL SUBJECTS;*

OPINIONS OF COUNSEL;

ACCOUNT AND ANALYSIS OF NEW LAW BOOKS;

**Ancient Readings ;**

*MEMOIR ON THE MANUSCRIPT OF*

**LORD COKE'S COMMENTARY UPON LITTLETON,**

WITH

*NOTICES OF HIS LIFE BY HIMSELF, &c. &c.*



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## ORIGINAL COMMUNICATIONS

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- I. *Original Opinions on the Will of Sir Thomas Cave, taken previous to the Proceedings reported in 2 Hen. Black. 516, 1 Pul. and Bos. 576, and 7 Term Rep. 399.*

THE Conductors of the Law Journal have been favoured by a Correspondent\* with the opinions, taken in the case of *Cave versus Holford*, previous to its being decided; and as those opinions appear to be of importance, and concurrent with the ultimate result of it reported in *H. Blackstone the Term Reports*, and *Bosanquet and Puller*, they present them to the Subscribers to this Work in the same state in which they appear to have been delivered.

### CAVE v. HOLFORD.

#### *Short Statement of the Case.*

Dec. 13, 1790. IN contemplation of an intended marriage between Sir Thomas Cave, Bart. and Lady Lucy Sherard, daughter of the earl of Harborough, an agreement in writing, on unstamped paper, was signed by the earl and Sir Thomas, whereby the earl agreed to make Lady Lucy's fortune 30,000l. ; 20,000l. to be paid down on the marriage, and 10,000l. to be secured upon part of his real estate, and paid upon his (the earl's) decease. And Sir Thomas agreed to apply part of the fortune in discharging a mortgage of 14,500l. upon his estate at South Kilworth and Swinford, and to settle the said estates, so as to secure Lady Lucy, after Sir Thomas's death, a jointure thereof of 1400l. per annum; and out of his Stanford estate to secure an additional jointure of 600l. per annum after the death of the survivor of Sir Thomas and his mother.

Also, to make a provision out of the Stanford estate for younger children; and to settle the said estate, subject as aforesaid, upon his eldest son and his heirs male, in strict settlement.

March 13, 1791. Sir Thomas by will, "in case he should happen to die without leaving any. issue of his body living at his decease," devises all his aforesaid hereditaments in tail, "subject nevertheless to such

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\* Mr. G. P——r, of Camden-street, Islington.

*jointure or jointures as he might thereafter make upon the woman he might happen to marry*, to his uncle Charles Cave for life, and to his first and other sons in tail male, with remainders over in favour of John Cave Broyn, and his first and other sons in like manner, remainder to his own right heirs. And charges the said estates with divers sums in favour of other persons therein mentioned.

*May 26 and 27, 1791.* By lease and release, the Stanford estates are conveyed to Lord Sherard and Mr. Robert Holford, to the intent for better securing Lady Cave's jointure after the marriage.

To Sir Thomas for life—remainder;

To other trustees to support, &c.—remainder;

As to part of the premises, for securing Lady Lucy's additional jointure after the death of Lady Cave and Sir T. Cave—remainder;

To Lord Sherard and Holford for 500 years; and as to all other the remainder;

To same trustees for 1000 years; and subject to the said terms;

To the first son and other sons of the marriage, successively in tail male—remainder to Sir Thomas in fee.

Terms raised for securing jointure and portions of younger children, and for keeping down interest of mortgages for 6000*l.* and 5000*l.* therein mentioned.

Covenant from Lord Harborough to pay interest during his life, and that his heirs, &c. within six months after his death should pay the principal.

And in this settlement is a clause, empowering Sir Thomas, in the event of his surviving Lady Lucy, *to make a jointure or jointures on any other wife or wives.*

*Same dates.* By indentures of lease and release, the estates at Swinford and South Kilworth are conveyed to Lord Sherard and Mr. Holford, for securing to Lady Lucy the jointure of 1400*l.* and subject thereto to Sir Thomas in fee.

Soon after, the marriage took effect.

In this cause there is parol evidence to show Sir Thomas's intention, that his will should not be revoked.

*Mr. Serjeant Hill's Opinion on Sir Thomas Cave's Will, &c.*

I think the marriage settlements, after making the will operate as a full revocation in law of the several devises of the real estates therein contained, so as to occasion all those estates to descend to the testator's sister as heir at law in fee simple, without any of the charges thereupon by the will.

I also think the personalty will be distributable by the statute, in

the manner mentioned in the question, unless there should happen to be a posthumous child, in which case the widow lady would be intitled only to one-third, and the posthumous child or children to the other two-thirds; or if such posthumous child or children, being born alive, should die intestate, and without being married, or should die ever so soon after their birth, then the widow lady would be intitled to the whole personal estate; and a posthumous child would, I think, be intitled to the real estate. 5 Burr. 2708. 2 Brown, 340.

As to the first part of the case, if a devisor makes a partial disposition of his estate, if not by conveyance to uses, but by demise, for a term of years, or by feoffment not to uses or other conveyance at common law for life, or in tail, leaving the reversion in fee in himself, I apprehend such demise, or other common law conveyance, would not be a total revocation of a prior disposition by will of the same estate, but only a revocation, *pro tanto*, as was necessary to let in the particular estates, in the same manner as in the known case of a mortgage, by a devisor, for a term of years, which, even at law, operates only as a revocation, *pro tanto*, to let in the mortgage, and leaves the reversion and redemption to pass to the devisor. So if a mortgage be in fee, in equity, it is no revocation, further than to let in the mortgage upon the estate, but the equity of redemption passes to the devisee, though the will was prior to the mortgage. All conveyances in fee are now almost universally by way of use; if not, I should think the mortgage in fee no revocation at law: and though the statute of uses hath introduced a new mode of conveying, yet it hath introduced no alteration in the minds of testators; but only, if lawyers, who have observed, that in such conveyances the whole fee simple is conveyed to the releasee or feoffee to uses, followed by a declaration of uses to one or more persons for particular estates, generally with an express use; but if not expressed (after all the prior estates are determined) with an implied use to the releasor or feoffor and his heirs, and from thence lawyers have concluded, that the fee simple being limited to the testator and his heirs, is inconsistent with the devise in his will to some other person; and therefore a revocation of it, though no such thing was intended, or so much as known to the testator, and notwithstanding for all other purposes, except that of revoking the will, the use to the testator and his heirs, whether implied, as in 3 Lev. 406, or expressed, as in Salk. 590, is not a new estate, but is the same estate as he had before the conveyance or settlement. If, before it was an estate descendible to the maternal heir, it appears by these cases it will continue so, being the direct contrary to what is there reported; for they did not hold (as there said), that the vouchee in that case gained a new estate, but, on the contrary, continued seised of the old estate; and the law is taken to be settled, that any deed to uses, though they never take effect as in *Lord Lincoln's* case, and more clearly if they do take effect, though only to particular estates, will be a total revocation of a prior devise of the same estate, and not so far only as is necessary to create the particular estates. This I take to have been always, since *Lord Lincoln's* case, so considered, though reluctantly; and *Lord Lincoln's* case

has been followed, and a recovery intended only to confirm, hath been holden a revocation of a will, 3 *Atk.* 803. The zeal, in general laudable, of adhering to the rule, *stare decisis*, has, I think, in this instance, been carried to an extreme. Lord Hardwicke, in 3 *Atk.* 176, seems to have disliked, but would not plainly speak against this kind of revocations; but Lord Mansfield, 3 *Burr.* 1749, observed, that constructive revocations ought not to be indulged, and that some overstrained resolutions of that sort had brought a scandal upon the law; therefore, courts have sometimes got rid of them as in the case of a partition there mentioned, which, though by fine hath been holden not to revoke a will, 8 *Vin.* 148, pl. 30; in 2 *Vern.* 241, there is a case which seems to go further than any, viz. that a conveyance to uses, where (as alledged in other cases) the absolute fee simple was transferred out of the testator, and though but for an instant, and in idea only, was holden, no revocation; yet, according to manuscript notes, that case has been disapproved of: it was before *Lord Lincoln's* case, and not there cited. There are some other cases in 2 *Eq. Abr.* 777 Ca. 26, and one in *Ambl.* 495, but much fuller in A.'s, where a will was not revoked by a subsequent disposition. These were determined on this principle, that in these particular cases the will and the deed were consistent; there seems to be some ground for the same argument in this case, but I doubt not sufficient to bring this within the authority of those cases, because it will be said, that the fee by the settlement is limited to Sir Thomas's heirs, which is inconsistent with the devise, though I think it not so, for the reasons already mentioned; and that it would be so determined, if it was a new question, but that it will be considered as bound by authorities, and to be a revocation of the will.

I have been extremely engaged ever since this case was before me, and pressed for an answer, otherwise would have expressed my opinion more clearly and methodically on the subject.

G. HILL.

*Lincoln's Inn, Jan. 29, 1792.*

*Serjeant Hill's second Opinion on Sir T. Cave's Will.*

There are two facts in this case, neither of which was stated when I gave my former opinion: the first is, that Sir Thomas Cave had, previous to making his will, entered into an agreement for making a settlement on his marriage. The other, though not stated in this case, appears, by copies of the settlements now before me, viz. that there is contained in the settlements a recital of an agreement for making them, which I incline to think will be taken to refer to the articles, which seems to me to bring the present case within the reason of that of *Watts v. Fullerton*, Trinity, 14th Geo. III., and *Parson v. Freeman*, both of them cited *Douglas*, 691, 692, and warranted, as there cited by reports of the first in manuscript, and of the last in print and manuscript, which have established this principle, that where a man, having only an equitable estate, disposes of



it by will, and afterwards takes a conveyance of the legal estate, the will is not thereby revoked.

As to the estates of South Kilworth and Swinford, I incline to think the will may be supported on another ground, which is, that the settlement of those estates was made merely for securing a jointure to Lady Lucy. And it hath been long settled, that a mortgage in fee, subsequent to a will, is in equity not a revocation of the will, further than to let in the mortgage upon the estate: and the same hath been holden with respect to a conveyance to trustees for payment of debts; and the intent and operation of the settlement of Kilworth and Swinford is nothing more than the bringing a charge on those estates.

As to the parol declarations of intention, there are but few cases in which they are admissible; and this does not appear to me to be one of them. But if the will or the deeds had been misdated, I think parol evidence, if there were any, might be admitted, to shew that the will was executed after, though it bears date before the settlements; but no such evidence is stated: and the will refers to a future jointure, which is an evidence that the jointure was not then actually made. I also think it not clear, whether the parol evidence might not be admitted, to shew that the agreement recited in the settlement was before the will, supposing the settlements had varied from the written agreement, for as both were before marriage, the parties might vary from the agreement; but there does not appear to be any variance with respect to the settlement of the testator's estate; and therefore I think the agreement recited in the settlements will be taken to refer to the written agreement. And then the point, Whether parol evidence might be admitted, as to the time when the recited agreement was made, cannot come in question.

G. HILL.

*Lincoln's Inn, February 27, 1792.*

*The Solicitor General's Opinion on Sir Thomas Cave's Will, &c.*

The authorities with respect to the effect of settlements made subsequently to wills, are so extremely strong to prove them revocations, even with respect to such interests in the estates as remains in the grantor, that it will be found very difficult to establish the will in question. This case, however, has circumstances in it which are singular; and the disapprobation which, in some late cases, has been expressed with regard to those authorities, may perhaps operate to an extent, which makes it advisable to take the opinion of a court upon the validity of this will. With respect to the Swinford and South Kilworth estates, by the agreement, if a marriage took place, they were to be subject to 1400*l.* a year; and the settlement does not vary the testator's interest in those estates to any other extent than by effectuating that charge. There seems, therefore, to be some reason to contend, that the will itself having adverted to the jointure, by devising the estate subject to it, and the settlement being made

for this particular purpose, to let in the jointure, and the distinction not being very obvious between the effect of charging an estate with one sum of 1400l.; to be once paid (as for instance, charging by a mortgage, which is but a revocation *pro tanto*), and charging with as many sums of 1400l. by different payments, to be annually paid, as might become due to the jointress, the settlement ought not to be held to revoke the devise of these estates, except *pro tanto*, in letting in the jointure. In aid of these considerations, the other points suggested by Mr. Serjeant Hill, which apply to the Stanford as well as these estates, are also material. It will, however, I am afraid, be very difficult to make out upon these considerations that the will is not revoked, particularly as to the Stanford estates. For at the time of making the will, the marriage had not taken effect, and if the legal and equitable interests are to be considered as different estates in Sir Thomas Cave, it was by an event future to the date of the will that they became so. It may indeed be contended, that the will contemplated that future event; and by noticing the jointure, and failure of issue, meant only to devise what would remain in him under the prior articles, when that future event took place; but that could not be, because that interest, under the articles, being an estate to take effect after a failure of issue male, the testator's devise is quite of a different interest; for it would not take effect at all if there was a daughter at his death, or if either a son (though his issue immediately failed by his death), or a daughter lived an hour after him. It seems therefore to me very difficult to make out that the testator meant to devise the interest, which would be in equity the interest remaining in him if he married and did not execute a settlement according to the articles on which would be the estate, which in law would, after the marriage, remain in him, if he married and did not execute such a settlement. It must at least be made out, that he meant to devise that interest upon a contingency, which the articles do not contemplate. He seems rather to have intended to give his estate (the immediate fee of it), if there was no child at his death, than to give such interest in it as he had under the articles if there should be a marriage, and a son, and then the case seems to come to this, that a testator devises this Stanford estate, in case he had no child at his death, and afterwards makes such a settlement of it as in ordinary cases is a revocation. The other estates are not so settled, but the jointure only is charged, which makes the case, as to them, more favourable to the devisees, though difficult, I think to distinguish from some cases of revocation. If the question could be tried at law, it would be most advisable, because it would be least expensive; but it occurs to me, that probably the term in the will itself might, according to modern practice, or that some other of the incumbrances, which the production of the settlement and will must shew are existing and unsatisfied, prevent the question from being effectually tried in that way; but this must be learnt of those who are more conversant with the present practice of common law courts in ejectments as to outstanding terms than I am. And I should rather think, that attending to all the particular facts of this

case a bill in equity would be the most advisable though certainly the expence would be so much greater, that if the parties could be assured by the opinion of eminent common lawyers that they could have in a trial at law the whole effect of all those facts, that way of trying the questions would be the most advisable.

J. SCOTT.

*Lincoln's-Inn, 26th March, 1792.*

*Mr. Mitford's Opinion on the Will and Settlements of Sir Thomas Cave.*

I have very considerable doubt upon this case. I presume the articles between Lord Harborough and Sir Thomas Cave, and the will and settlements, were all executed on the days, or at least in the order of the days on which they respectively bear date, so that the will is clearly subsequent to the articles, and prior to the settlements.

In all cases of revocation of wills by subsequent acts the intention of the testator, *to be collected from his acts*, must decide, whether the subsequent act is to be deemed a revocation of the will, or not: therefore a mortgage for years is a revocation of a will of the same lands, only so far as to let in the incumbrance, and a mortgage in fee, though an absolute revocation at law, because the whole estate is conveyed, is a revocation in equity only to the extent of the incumbrance. Many cases have been determined on this principle; but some of them have been decided on very nice distinctions, and I apprehend there is no case directly in point with the present. One of the earliest cases is that of the earl of Lincoln and Rolfe. *Show. Pl. 154.* There the earl of Lincoln, having made a disposition of his real estate by will, afterwards executed a settlement in contemplation of a marriage which never took effect. It was admitted that the settlement conveying the whole fee operated as a revocation of the will at law, but it was insisted that it ought not to operate as a revocation in equity, and that the heirs ought to be compelled in equity to execute the will. The determination in the court of Chancery and in the house of Lords was against this supposed equity: but the case was extremely strong to shew that the intention of the testator had changed, supposing the marriage to have taken effect; as the settlement conveyed away part of the estate to the intended wife in fee, and vested the rest in trustees to sell and dispose of the produce as the testator should by a future will and deed appoint; and with a general power of revocation by a future deed or will: so that in case the marriage had taken effect, it was clear the testator did not intend the will he had executed should operate on so much of the property as should not be settled on the marriage, and therefore the provision for the marriage, was not the sole object of the deed. In *Vernon v. Jones, Pr. in Ch. 32.* 2 *Vern* 241, a conveyance to trustees to sell and pay debts, and as to the surplus in trust for the grantor and his heirs, was deemed a revocation *pro tanto*, only of a prior will, being made for particular purposes. In *Parsons and Freeman, 3 Atk. 741.*

*Ambl.* 116, a subsequent conveyance was held to be a revocation of a will, under circumstances which have strong similarity to the present case: there by articles previous to the marriage of Mr. and Mrs. Freeman, she agreed to suffer a recovery of her estates, and convey them to her husband in fee: After the marriage, Mr. Freeman made his will devising these estates. After the will a recovery was suffered by Mr. and Mrs. Freeman of the same estates, and by a deed declaring the uses of the recovery the estates were limited to such uses as Mr. and Mrs. Freeman should appoint, and in default of appointment to Mr. Freeman in fee. In that case Lord Hardwick thought, if the uses of the recovery had been only to Mr. Freeman in fee it would have operated as a revocation of the will, because it would have been merely a conveyance of the legal estate according to his prior equitable title; but that the introduction of the power of appointment was a modification of the prior equitable title according to a new agreement between him and Mrs. Freeman and that therefore the prior equitable title which he had intended to devise by his will, was not merely merged in a legal title which would have been the case if the limitation of the use on the recovery had been wholly destroyed by the new agreement between the husband and wife, and the limitation of the use on the recovery was deemed by his lordship a creation of a new legal title according to that new agreement. He therefore held the acts of Mr. Freeman a revocation of the will, because they had wholly destroyed the estate intended to be disposed of by it. It must be confessed the distinction was extremely nice; but it had before in some degree been taken in *Tickner v. Tickner*, cited in 3 *Atk.* 742, where a conveyance on a partition of the share allotted to one "to such uses as he should appoint by deed or writing, and in default of such appointment to him in fee" was held a revocation of a prior will although in the case cited in note B. 3 P.W. 169. it was determined that a mere conveyance in severalty upon a partition would not revoke a prior will disposing of an undivided moiety, so that the decision in *Tickner* and *Tickner* must have turned merely on the power of appointment, which might be deemed to shew an intention that the subsisting will, which could not operate under the power, should not operate on the property. In the present case, sir Thomas Cave by the articles covenanted to make a settlement. He then made a will perfectly consistent with those articles, because it disposed of his estates only in the event of his leaving no issue living at his death, and subject to such jointure as he might make on a wife, I think therefore he may be deemed to have had the articles in contemplation at the time he made the will. He then married, and previous to the marriage, made an actual settlement pursuant to the articles. The settlement of Kilworth and Swinford is in strict conformity to the articles, and merely to let in the jointure; so that I think it cannot be deemed a revocation of the will; the settlement of Stanford adds a power of jointuring a second wife, but as that power is only for a particular purpose, and the devise in the will is expressly subject to any jointure, I think that settlement does not revoke

the will; I think the vicarage and rectory inappropriate of Swinford will pass under the general words in the second settlement.

On the steps proper to be taken by Mr. and Mrs. Otway.

I think it will in all events be advisable for Mr. and Mrs. Otway immediately to levy fines, and make the proposed grant of the annuity and settlement; although the expence of such fines and settlement will be considerable, and if the will is not revoked will be nugatory so far only excepted as they will intitle Mr. and Mrs. Otway to the benefit of the agreement with Mr. Cave. The only way of determining the questions so as to bind the rights of all parties will be by bill in equity in the names of Mr. Holford, and Mr. Jervoise, as trustees of the 500 years term, and executors to have the 20,000*l.* raised under the trusts of the term and the debts paid under the direction of the court, suggesting that it is insisted the mortgage debts (if there are any except Mr. Gosling's) ought to be paid out of the personal estate, and for these purposes to have the will established as far as it remains unrevoked. To this bill Mr. and Mrs. Otway and their children, Mr. Charles Cave, Mr. Cave Brown and his son, and all the remainder men, unless there is a remainder man in tail in being, and also the persons who can claim the 10,000*l.* under the gift to the uncles and aunts, must be parties. To save expence the uncles and aunts, except Mr. Charles Cave, may be co-plaintiffs. It may be a question whether the sisters of the dowager lady Cave are not within the description of aunts, although probably this was not the intention of sir Thomas Cave. Upon the hearing of the cause in equity, either the question of revocation will be determined by the court, or a case will be made for the opinion of a court of law, or an issue directed to try the facts, if there are any capable of being disputed. I conceive a bill in equity is the only effectual means of quieting, the title and will in all events be necessary for raising the 20,000*l.* and determining the title to the 10,000*l.* given to the uncles, and aunts if the parties cannot agree, and, for ascertaining the money to be raised out of the small property not affected by the settlements, if the settlements operate as a revocation on account of the Kilworth and Swinford estates; also, if the settlement of those estates does not revoke the will, and the settlement of the Stanford estates does revoke it as to the estates comprised in that settlement. If there is no mortgage debt but that which lord Harborough has covenanted to discharge, the debts and personal estate of sir Thomas Cave need not be brought in question unless the personal estate is insufficient for the payment of his debts, and there are special debts.

J. MITFORD,

*Lincoln's-Inn, 10th March, 1792.*

*Mr. Hargrave's Opinion on the Question of Revocation.*

Whether sir Thomas Cave's will, of his real estate, is not wholly revoked by the two subsequent settlements and the marriage, appears to me a question full of difficulty. I have repeatedly considered the case; but at length I find, that I must leave it, with a very doubtful opinion. The circumstances which most stagger me are, sir Thomas having before execution of his will, signed the agreement, in pursuance of which the marriage settlements were made, and his devising his real estates, in a manner implying that the will might operate, notwithstanding a subsequent marriage and jointure. From these circumstances, coupled with the circumstances, that the devise of his real estate is only on the contingency of his dying without leaving issue living at his death, a strong foundation arises for arguing, that there was an intention, not to have the devise in his will wholly revoked, by the subsequent settlements and marriage; and also, that, by applying the devises in his will, to the remainder in fee, reserved to him by one of the settlements, in one branch of the estate; and to the fee itself, reserved to him by the other settlements, subject to a jointure to Lady Cave, and to a term of 500 years, in another branch of the estates, the settlements and the will, may both have effect without the least clashing, or inconsistency. If it was not for the pressure in favour of the devisees from this peculiarity of the case, I should think it clear, that the settlements and marriage ought to be deemed a total revocation of the devisors will, except in respect to the small estate, which was not comprised in either of the settlements. The authorities for this latter construction are very numerous; those which at present occur to me, as more particularly in favour of the heir at law of sir Thomas are, *Montague v. Jeffries*, Mo. 429; *Dister v. Dister*, 3 Lx. 108; the earl of Lincoln's case, in *Eq. Cas. Ab.* 411; 2 *Frem.* 202; and *Show. Parl. Cas.* 154. *Marwood v. Cholmley*, 3 Will. 163; *James v. Phillip*, before sir Joseph Jekyll in 1733, but not I believe in print; *Martin v. Savage and Barnard*, Ch. Rep. 189; *Parsons v. Freeman*, 3 Atk. 741, 1 Wills. 308, and *Amb.* 116; *Sparrow v. Hardcastle*, 3 Atk. 798, and *Amb.* 224; *Darley v. Darley*, 3 Wills. 6; and *Jackson, and Sutton v. Hurlock and others*, *Amb.* 437. Of these authorities one of the most leading is the earl of Lincoln's case, which was finally a determination of the house of Lords, and which is often referred to in the subsequent cases with approbation, particularly by lord Hardwicke, and lord Northington, and which according to Mr. Douglas's reports of the case of *Doe and Pott*, even lord Mansfield at the very moment of censuring it, admitted to be now law. Altogether they will be found to supply a great mass of reasoning and authority, for a total revocation of the devise of the estates, comprised in the marriage settlements in the present case. How far the special circumstances I have already adverted to, may be deemed adequate to take the present case out of the reach of these authorities appears to me very uncertain: but upon the whole, I rather think that there is not

enough to take this case out of the doctrine of the cases I have cited; because sir Thomas having aliened the fee to trustees to uses, subsequently to his will, and having under those uses taken a newly modified estate, appears to me to constitute that ground for inferring a revocation at law, which hitherto has chiefly governed in cases of this sort, and, because it is also to be remembered that the statutes which give the power of devising land, only enable the devise of land of which the testator is seized at the time; and therefore that even an express intention is not sufficient to give effect to a will, upon lands subsequently acquired. Equity, indeed, sometimes saves a devise revoked at law; thus, in the case of a mortgage in fee, after a will, equity treats the mortgage only as a partial revocation, upon the ground that a mortgage is merely a security. This was done in *Hall v. Dunch*, 1 Vern. 329 & 342; and lord Hardwicke observes, at the same time, that this exception of equity is confined to mortgages and securities for money: and I should think that it would be found very difficult to induce a court of equity to extend the exception further: yet if the principal of the exception of equity is, as it seems to be, simply the manifest intention of the testator, not to disturb his will beyond the extent of the charge created by the mortgage if the present case should be construed to contain equal evidence of an intent, only to subject the devised estates to the settlement, there is no saying that the present case may not be brought within the reason, and consequently the applicability of the exception. With respect to the latter branch of this first question, I think that the general words in the settlement, which comprehend the manor of Swinford, were sufficient to pass the rectory impropriate, and advowson of the same denomination.

*Mr. Hargrave's Answer to the second Question.*

I am under very considerable difficulty from the two agreements which have been entered into between Sir Charles Cave and Mr. and Mrs. Otway, how to advise on this second question: and as the right to so very large an estate is depending, and it is of great importance to the parties to shape the proceedings for trial of the point of revocation in the most convenient way, I recommend leaving the subject of this second question laid before all the counsel for Mr. and Mrs. Otway, for a joint opinion, therefore I will only observe for the present, that it is; as I conceive, most for the advantage of Mr. Otway, as heir at law, to have the point of revocation determined in a court of law.

FRANCIS HARGRAVE.

New Boswell Court, 16th April, 1792.

*Mr. Fearn's Opinion on Sir Thomas Cave's Will and Settlement.*

I must confess that I find much difficulty in making up my mind to an opinion upon the case now stated to me. It is of that novel impression, for which I am not apprised of any direct authority.

Had the question rested on a will containing in-itself no reference to, or expressions apparently denoting the testator's contemplation of a *subsequent settlement*; I should scarcely have hesitated in considering the subsequent settlement as a revocation of the will, under the concurrent weight of abundant authorities. But here the circumstances of the devise being *expressly confined* to the event of the testator's death without *leaving any issue* of his body living at his decease, and being made expressly subject to such jointure or jointures as he should thereafter make upon the *woman* he might happen to marry; and that at a time when he had just entered into a contract for making jointures on a woman with whom he was actually under a treaty for *marriage*, seems to me to create a distinction betwixt the present case and those which I conceive must have ruled the decision, if those circumstances had been wanting. That any grant, feoffment, lease, and release, or any other conveyance, though to the use of the testator and his heirs, after the execution of his will, in general operates as a revocation of his prior will (in respect to the *conveyed lands*) cannot, I think, at this day, admit of controversy. I mean as a *general position*. For that the rule admits of various *exceptions* is clear from the cases upon *partitions* by feoffment, lease and release, or fine between tenants in common, as well as conveyances of the fee by way of mortgage, or in trust for payment of debts, or particular charges.

And these exceptions shew us that the rule itself is not grounded in the mere alteration in the *plight of the estate* consequent on the conveyance itself, abstracted from the nature and tendency of the disposition effected or attempted by it, or any reference to the express or presumptive intention of the testator afforded us thereby.

For if that were the case, conveyances for effectuating partition, or by way of mortgage in fee, or in trust for payment of debts, &c. would fall equally within the extent of the rule. But it seems that in all those cases, where a conveyance does not operate to give a new and different estate from that which was in the testator, and liable to the operation of his will at the time, as a fee-simple; for instance, where he had nothing more than an estate-tail before, or an estate by *purchase*, instead of one by *descent*, by changing the old use, that is, in short, whenever the old estate is not taken out of the testator's by the conveyance, or the estate left in or restored, or resulting to or in trust for him, under or after the conveyance, is considered to be his *old*, or part of his *old* estate. There the operation of such conveyance, *as a revocation of his will*, quoad the estate not disposed of as subject to other purposes, seems to be founded on the same grounds as the similar effect allowed to incomplete conveyances, failing for want of some ceremony requisite to their effect, (as a feoffment defective in respect to livery, grant without attornment, bargain and sale not inrolled), namely, an *implication* of the testator's change of intention, with regard to the estate arising from his making, or attempting the subsequent conveyance of it; and accordingly we find, that upon the case of a feoffment, where the testator takes back the old use, Lord Hardwicke observed, that the construction



must arise from a *presumption* (adopted by the law) in favour of the *heir*, that the testator would not have made a new conveyance, without an intention to revoke his will. *Vide 3 Atkyns, 748. 1 Wils. 310.* And he distinguishes the cases of a conveyance in fee by way of mortgage, or for payment of debts from it, by considering the testator himself, as having in the nature and purpose of the conveyance drawn the line how far the *revocation should go*, and plainly shews his intention as to the extent of it. Now, if it be admitted, that the operation of the rule in conveyances, where the estate remaining in, or resulting to, the testator, is part of the old estate, depends on his *presumable intention* to revoke his will, I think it will follow that such presumption may be encountered by circumstances of a *contrary implication*, denoting the testator's intention, that the revocation should not go *beyond certain limits*, viz. the immediate purposes of the conveyance; upon the very same principle to which lord Hardwicke referred the distinction of the cases of mortgages in fee, and conveyances for payment of debts. And then whenever there are *sufficient arguments of such an intention* in the testator, to confine the revocation only to a particular extent, and let the will stand beyond that. It seems, I think, in excluding the presumption of an absolute or total revocation, to deny that operation of the rule which is *ascribed* only to such *legal presumption*. The present case is one of those where the fee, limited to the use of the testator in his subsequent settlement, was the reversion, and part of his old use and estate in the lands. And taking it then for granted, as I should within the authority of the earl of Lincoln's case, cited below, that the testator's conveyance of the *whole fee* in that settlement, and the relimiting the reversion to himself and his heirs, would have left it within the extent of the general rule, if nothing had occurred to shew the testator's intention, to confine the revocation of that settlement to the purposes of a *jointure for his wife*, and provision for his issue. Still I think it may be contended, that if circumstances *sufficiently demonstrative of such an intention* do exist, they should have their operation, against the effect of the *general presumption, opposed by them*. Revocations of this sort appear to be grounded on *implication* or the *presumed intention* of the testator; but implication or presumption of intention may, it should seem, be rebutted by *evidence of a contrary intention*, *Vide Doug. Rep. 39 and 40.* And where is the difference, whether, the arguments of such contrary intention are to be collected from the *will*, or from the subsequent conveyance itself? In the case of mortgages in fee, &c. it is inferred from the *purposes* of the conveyance. But has it not the *same tendency*, if founded on expressions in the *will*, manifestly referring to the intention and nature of the intended conveyance? In the present, the testator *soon after* having entered into a treaty for marriage, and executed a contract for settling his estates, so as to secure *jointures* on his intended wife, and *make provisions for the issue of the intended marriage*, makes a disposition by his will, of the lands, *expressly confined*, in its intended operation, to his *leaving no issue*, and *subject to the jointure or jointures he might there-*

*after make upon the woman he might happen to marry.* Could there be a more evident allusion to the provisions he had so stipulated to make? Did not this amount to an exception of those intended provisions out of the extent of his will, and consequently imply an affirmation of his intention that it should operate beyond them? Was not this expressly drawing the line of the intended revocation, and negating it beyond the provisions intended to be made for his wife and issue by the stipulated settlement? Could a mortgage in fee, to the amount of three-fourths of the estate, or a conveyance of it to trustees to sell for the discharge of debts, and to pay the residue to himself, amount to a more clear indication of his intention, where he intended the revocation should stop, than this did? If not, the question is, Why the one be less effectual than the other in imposing the limits of the revocation to be effected by it? When the testator disposed of the lands, in case of *his leaving no issue, and subject to the jointure he might make on the wife he might marry*, it seems to imply, that he did not intend the settlement he was about, and had agreed to make, for securing a provision for any such issue, and jointures for such wife, should revoke the disposition so directed to take place in failure of, or subject to them. The circumstances of the recent subsisting articles for making the settlement, may perhaps be said to have put him in the situation of a sort of trustee for himself of the fee, subject to the stipulated provisions of that settlement, which became actually and absolutely executed in him by the settlement afterwards made. And in this respect the case may be thought to bear a sort of analogy to that of an actual conveyance taken by a person under a contract for the purchase of an estate, which he had devised by will intermediate between the contract and the completion of his purchase, which it has been decided is no revocation of such intervening devise. But abstracted from this view of the case, the reference in the will to the provisions stipulated by the previous marriage articles, and the restoration of the devise to an interest in the lands *ulterior to, and subject to those provisions*, seems to me to afford such a degree of analogy between it and all the cases of mortgages of the whole fee and trusts for payment of debts, &c. under the principle to which Lord Hardwicke referred the exception of those cases from the general rule, in the places I have referred to, that I rather incline to an opinion, that the present case may, on that ground, in equity at least, be held to fall within the reason of those cases; and consequently, that the will was not revoked by the settlement as to the lands comprised in both, further than as to the stipulated jointures for the wife, and provisions for the issue of the marriage. But though this is the inclination of my opinion, I must confess I feel great diffidence in it, as I think it, at all events, a very disputable point.

As to such of the estates included in the will as were not comprised in the settlement, I apprehend the settlement could have no operation to revoke the devise of them, or carry them to the heir. And as to the rectory of Swinford, it rather seems to me, that it passed by the general words of the settlement, "of all other the hereditaments of the said sir Thomas Cave, situate within the parish of Swinford."

In respect to cases, the principal of those relative to this point are pretty well known. Vide *Dister v. Dister*, 3 *Lev.* 108; *Lord Lincoln's case*, 1 *Eq. Abr.* 411, *Show. Cas. Parl.* 154; *Marwood v. Turner*, 3 *P. Williams*, 163; *Darley v. Darley*, 3 *Wils.* 6, and the cases and principles referred to by *Lord Hardwicke*, in the case of *Parsons v. Freeman*, above cited, and the reference in *Coxe's note*, 3 *P. Williams*, 166. The cases from which the inclination of my opinion is deducible, are those which have been held exceptions to the general rule: and the principle of them, as stated by *Lord Hardwicke*, in the said case of *Parsons and Freeman*, combined with the supposition that the consequences attributable to what would otherwise be the implicative or presumable intention, are precluded by plain indication of a contrary intention.

CHARLES FEARNE.

*Bream's Buildings, April 1792.*

In the view I have taken of the case, and the consequent inclination of my opinion, as delivered in my above answer to the first quære, I cannot think it advisable for the parties to proceed on the idea of the will's being revoked by a settlement, or engage in the levying fines to accomplish the arrangements intended under such a supposition. But I think it will be proper to have the question, upon the operation of the will, first decided, and that, by application to a court of equity on a bill to be filed by Mr. Cave, and other parties, against the heir and trustees to establish the will, and have the trusts of the term thereby created, carried into execution, and the legacies paid according to the will. Should the decision be ultimately referred to the operation of the settlement as a legal revocation of the will, I apprehend that point may be determined on an issue directed for that purpose by the court of chancery.

*April 27, 1792,*

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## II. Remarks on "Additional Observations on the Exercise of Power of Appointment, &c."

WHEN I perused Mr. B.'s second communication, I was much surprised to find, that from a fear of exceeding the limits of it, he was prevented from (doing what I think would have been of considerable service) reviewing the different opinions on the subject. I hope some one of your numerous Correspondents will gratify your readers with an examination of the various arguments, and an elaborate decision of this point, which has displayed the humorous as well as the serious talents of many of your Correspondents.

Mr. B. observes, that "the legislature in the stat. of 27 H. 8, intended to annihilate this sort of limitations as distinct

*from the land or possession, but they bungled so in the business, and expressed themselves in such words, that the Judges, in the exposition of the statute, felt themselves obliged to give them still some existence under the name of trusts."* Now I must beg leave to dissent from the opinions advanced by Mr. B.

For on referring to Bacon's Readings on Uses, in his Law Tracts, page 324, I find he remarks, that "however it hath been, by the *humour of the times, perverted in exposition*, yet in itself is most perfectly and exactly conceived and penned of any law in the book. It is introduced with the most declaring and persuading preamble, 'tis consisting and standing upon the wisest and fittest ordinances, and qualified with the most foreseeing and circumspect savings and provisions; and lastly, it is the best pondered in all the words and clauses of it of any statute I find."

This may seem a sufficient answer to the somewhat inelegantly expressed charge of your Correspondent. Bacon further gives, in page 331, 2, 3, the most indisputable reasons to prove the statute did not intend to extirpate uses, and to these Mr. Saunders, in his invaluable Treatise on Uses and Trusts, page 88, 89, 90, has given his assent. "So that though the grounds on which Mr. B.'s opinion affects to proceed, are materially different to those I support, yet I humbly presume to have taken mine more happily on the same occasion."

SENIOR.

*Pump-court, Temple, 17 Feb. 1804.*

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### III. *Reply to Studens on the Subject of the Statute of Uses, 27 H. 8. c. 10, Vide vol. 2, page 183.*

I HAVE been accused of having no poignancy of wit, with a paucity of argument; however, as this accusation does not in the least affect the *truth* or the *strength* of the *few* arguments which I have advanced, I shall not make any reply to it.

Another accusation is, that I did not quote and refute Mr. Butler's doctrine, as well as that of Mr. Saunders, though it is at the same time acknowledged that both doctrines are alike. If therefore one was proved to be false, the other surely could not require any separate animadversions; although I might have indeed increased by it the multiplicity of my arguments, and so have escaped one of the censures of *Studens*.

In the soliloquy which *Studens* has gratuitously attributed to me, it is said, that I hacked and mangled Mr. Saunders's words. It is rather to be lamented that this gentleman should display his powers of "wit" somewhat at the expence of truth; for in the present instance it is evident that my quotation of Mr. Saunders's words is exact, and that the construction I put upon them is allowed by *Studens* himself to be just.

But it is not *my* intention to make the Law Journal a vehicle of altercation\*. The question to be discussed is, whether the operation of the Statute of Uses extends to uses created by will, or not? Now it is evident that the *words* of the statute extend to wills as expressly and clearly as any words can do. It is also evident, that the operation of the statute is co-extensive with its words wherever no sufficient reason appears to the contrary. But where the most obvious and just construction of a statute determines the force and extent of its words, what sufficient reason for restriction can be given? I know of none. The evils intended to be remedied by the present statute are fully set forth in the preamble; and they are these, namely, "that many heirs have been unjustly disinherited, the lords have lost their wards, marriages, reliefs, &c." All these evils arose from the distinction taken between the *legal* estate of the land and the *use* of it. Henry the Eighth was himself a good deal irritated by the loss of some of these *reliques* of feudal tyranny. He summoned his Judges, and directed them to give their advice as to the most effectual means of suppressing this growing innovation. Their opinion was, that "if the possession were united to the use, all would be well." And in conformity to this opinion the Statute of Uses was soon after enacted. The principal operative part of the statute has been quoted in some of the preceding papers, and to them I beg leave to refer the reader. Now, though the inducement for enacting the statute consisted in certain evils enumerated in the statute, yet the mode by which the legislature intended to obviate the evils is what is principally to be regarded in the construction of it. And it is evident, that although the evils which gave rise to it were partial, yet the remedy was intended to be universal; and if my

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\* In this intention we trust all our Correspondents will seriously join. We are happy at all times to afford opportunities for the exercise of talents in the liberal discussion of subjects strictly legal, by close argument and accurate investigation and we hope our Correspondents, will not quit it for the levity of personal satire.

reasoning be just, we must give it a universal construction. That this construction has the sanction of law as well as of reason I shall endeavour to make apparent in answer to the objections of *Studens*.

This gentleman's first argument is, that as the preamble of a statute does not complain of any hereditaments having been fraudulently transferred by wills, but only by assurances, therefore it was not the intention of the statute to touch *uses* on legal estates created by *will*, but only *uses* created by *assurances*.

The answer to this is thus:—As the enacting part of the statute certainly mentions *wills* and *every other mode of creating the legal estate either at that or any future time*, the weight of this argument must rest on the restriction which the preamble may have on the enacting part of the statute. But has it this power of restriction? To this *Studens* has only afforded us a naked assertion. Those who are not satisfied with his assertion will find,

1st, "That strong words in the enacting part of a statute may extend it beyond the preamble," *vide Pattison v. Bankes* \*. And it must be allowed, that the words in the enacting part of the present statute are as strong as any that can be found in our language.

2dly, "That the preamble of a statute cannot restrain the enacting part of it where the enacting part is clearly larger than the preamble." *Perkins v. Sewell* †. And it must be remembered, that the preamble, and the enacting part of the present statute, are not in *contradiction* to each other; though if they were, we have already seen to which the preference is due, but that the latter has only a *greater extension* than the former.

*Studens* himself, as if conscious of the weakness of his first argument, seeks refuge in a second, viz. "that the statute does not contain any words of a prospective import;" and to justify this very strange assertion, he advances another still more strange, viz. "that the word *hereafter* commonly relates to a *seizin*, which might be created under some assurance by virtue whereof those persons might *then* stand or be seized." This sentence, as I comprehend it, appears to imply, that the word "*hereafter*" *has most commonly a reference to the present time only*. If *Studens* did not mean to say this, he then has said nothing to prove that the statute *does not* contain words of a prospective import.

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\* B. R. H. 17 Geo. 3, 543.

† B. R. 3 Geo. 3. 1 Bl. 659.

All that now remains to be considered on this question in reply to *Studens* is,

1st, What construction *has been* put upon the statute in courts of justice, and what construction those courts *ought to have put* on it?

1st, Then, the construction which has invariably been put upon it is, that the statute *does* extend to wills. I shall only adduce one instance of the truth of this proposition, but it is an instance sanctioned by the names of Kenyon, Ashurst, Grose, and Lawrence, in the case of *Somerville v. Lethbridge* \*: and as the truth of that side of the question which I have argued for was there solemnly recognized, I imagine that whatever opinions any one may think proper to express respecting it, his practice will be conformable to it.

2dly, The construction that *ought* to be put on this or any other statute is nothing more than a fair and rational interpretation according to received rules. What these rules are I have already shewn; and it must be allowed that those rules justify the construction that has been made.

*Studens* says, that when a statute operates at all, it operates in a manner invariably the same.—Granted.—But it should be understood, that although a statute be composed of general and precise expressions, yet it can operate only on individual objects; and to determine whether any thing be an object of a statute or not, we must attend to circumstances. Thus, though a murder is universally punished by hanging, yet on any particular killing it may still be a question *to be determined by testimony*, whether it was done maliciously or accidentally. In like manner, to determine whether any particular expression create a legal or trust estate, we must *determine the construction of the instrument of conveyance according to the received rules of interpretation adopted in the class of instruments under consideration*, as whether they be deeds, wills, fines, or other instruments.

What *Studens* says of the practice of the profession is *just*, and is what I never denied. I only used it, in addition to what I had before attempted to prove, as a means of procuring practical assent.

As to the incidental question of the validity of a devise between the statute of uses and the statute of wills, the determination cannot *now* be of use. I beg leave, however, to

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\* Term Rep. 213.

observe, that it is notorious, that the *inability to devise*, when the spirit of the nation was so much inclined to it, was the proximate cause of enacting the statute of wills. And therefore it is probable, that if any decision had then taken place, it would have been consonant to the universal opinion of the times, and in observance of the then existing feudal institutions. And that this would have been the fact may I think be fairly argued from the instance which *Studens* has brought to the contrary. For if even at the time of *Sir Edward Clerc's* case, when alienation of property was so much countenanced and feudality so much undermined, it was then a doubt to be decided by a solemn judicial decision; surely, if a decision had taken place at the time before alluded to, under these circumstances, it would have been different from that in *Sir Edward Clerc's* case. But this point only admits of arguments founded on probabilities: and that which wears the face of probability to one person may seem improbable to another. For the reasons I have advanced in this and in my first paper on this subject, I still think the opinion of Messrs. Hargrave, Butler, Powell, and others on this subject to be just.

The only observation of *Studens* that now remains unanswered, is "that having a distinction in my mind, I did not act upon it," I do not wish to accuse that gentleman of intentional misrepresentation, but I must observe that I gave an instance which implied and explained the distinction alluded to (in p. 290 of volume 1st) in terms as plain as any that I can devise.

If *Studens* should make any further remarks on the subject of this paper, he will certainly not have any reply from me, unless he should urge something entirely new, and in a manner more candid than he has in his last production.

T. HIGGS.

Wolverhampton, Nov. 20th, 1803.

IV. Questions arising from the Act of the 43d Geo. 3. c. 46, enabling Persons to deposit Money in the Hands of the Sheriff, in lieu of Bail.

WE insert the following questions at the particular request of a Correspondent, as they may probably induce some of our readers to consider, at large, the effect and operation of this statute; the application of which is so gene-



rally interesting to every individual who becomes a party to a suit at law. We must at the same time observe, that when such questions apply to particular cases, they should properly be addressed to the practising barrister, in whose skill and experience the party may have learned to place confidence, and not to the CONDUCTORS of a work which professes not to interfere with the ordinary duties of the bar, but to afford, amongst other means of information, a vehicle for the general circulation of essays or short *tracts*, upon legal topics, combining general principles. For these reasons we refrain from entering ourselves into the subject of all queries proposed, and shall leave these to our Correspondents, as hints, for their inquiry more at large, or, as instances of the difficulties which may occur in the practical application of principles of law, apparently plain, and of statutes, introduced with an anxious zeal for the general relief of defendants at law, in cases which have hitherto been the occasion of frequent oppressions. That our present Correspondent, may not, however, complain that our silence is the result of any other motive, we will just suggest to him, that probably he may find a clue to resolve his difficulties the more readily, by considering that the deposit of money is *in lieu* of bail, to the sheriff, and, at least, upon principle, must be governed by nearly the same rules. Perhaps also, the inquiries in this and our last Number, upon a subject nearly allied to it, the liability of the sheriff in cases of an escape, may induce some of our Correspondents to favour us with a clear and concise review of the system of our law respecting arrest, and imprisonment for debt.

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By the 43 Geo. 3. c. 46. persons arrested on *nusne process* instead of giving bail, as formerly, may deposit with the sheriff, the sum indorsed on the writ, with ten pounds to answer the costs, and they shall be thereupon discharged.

*Query 1st.* Whether the officer can justify detaining persons so arrested, after their having complied with the above act, until he has searched the office, to see if any other writs are there against them? and whether he is not bound to liberate them *immediately* on their giving bail, or depositing with the sheriff, the sum indorsed on the writ, with ten pounds to answer the costs, agreeably to the said act? or be liable to an action for false imprisonment.

*Query 2d.* If the officer is not obliged to discharge the defendants immediately, on their giving bail, or complying with the said act, but is entitled to keep them in custody, until he has searched the office, how long can he keep them in custody at Portsmouth, or any such distance from Lon-

don, for the purpose? and is, or is not a defendant entitled to his discharge immediately on return of the post, supposing the officer should not receive an answer from the office by the same?—The officers at Portsmouth have frequently detained defendants in custody several days, under pretence of not having received an answer from the office.

*Query 3d.* The officers at Portsmouth charge 6s. 8d. for the under sheriff's fee, for searching the office, and 1s. for the postage of a letter to and from town. *Query,* If the officers have a right to search the office, is the under sheriff entitled to the above, or any other fee, for so doing? and if he is, by what act of parliament, or otherwise?

C. B.

*Town of Portsea, Dec. 3, 1803.*

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V. *On the due Execution of Wills of Copyhold Lands, under a Custom.*

**B** EING a constant reader, may I be permitted a page for the following question :

I observed in a will lately before me, wherein a copyhold estate was devised, that there were only two witnesses. Examining further into the matter, I discovered that the *custom* of the manor requires the will to be *duly executed*, to declare the uses of a surrender.

*Quære.* Will the above be sufficient to declare the uses of the surrender? or,

Do the words, *duly executed*, intend that the will should be executed according to the statute of frauds?

STUDENS.

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VI. *Error in the Queries proposed by B. in No. 10 of the Law Journal, corrected by himself, with additional Observations.*

**I** WILL most assuredly send the correspondence between Mr. F. and Mr. H. respecting Booth's papers, with memoirs of Mr. Fearne, taken by a very accurate hand; but at present they are inaccessible, in the hands of a country friend.

Allow me to trouble you with the inclosed\* for your consideration.

Will you have the goodness to refer to my letter, from which you extracted the three queries, inserted in your last Number but one of the Journal. You will find that the words comprehended in the parenthesis of the third query, were not "according to the *common practice*," but "according to the practice *I have seen*." You will oblige me in correcting this error immediately, in regard that it hath not escaped censure.

I was well acquainted with the authority introduced by Mr. C., before I put the question he has been pleased to answer; but notwithstanding the respect naturally attached to those authorities, I cannot help thinking, that arguments worthy of attention may be brought forward on other grounds, against the practice of calling in the wife upon the voucher, rather than barring her dower by fine.

But although these are the ideas which at present sway my mind, I cannot help observing, that I am not altogether satisfied about the point. At some future period I will do myself the pleasure of writing fully upon the subject, but at present I beg to give your abler friends the preference.

I am, Sir, your very obedient servant,  
New Inn, Feb. 15, 1804.

B.

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#### VII. On the Difficulty attending the Proof of Pedigree from Irregularities in the Mode of keeping Registers, &c.

IT can scarcely have escaped any persons in the least acquainted with the proceedings of Courts of Justice to observe how difficult it is become in later times to trace regularly the pedigree of any family, even of high rank in this kingdom; while persons, whose ancestors have not risen into eminence, should they by the decease of one of their own name without an acknowledged kin, really become entitled to claim his estate, would find it next to impossible clearly to trace the degrees of their relationship. Obscure reports of strangers, vague recollection of ancient neighbours and unauthenticated entries in old books, are often the only sources from which the descent of a collateral heir is proved; while the entries in parish registers are often kept without

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\* Several opinions of eminent conveyancers on important subjects, which shall be inserted speedily.

the smallest attention to accuracy, and with such little care, as to the custody of them, that they are constantly liable to obliteration, cancelling, and falsification, by those whom interest may tempt to the commission of such frauds. Of this an instance occurred in the case of the *duchess of Kingston*, which perhaps was more remarkable for the rank of the agent than the rarity of the act. In hunting out the ancestors of a client, I have often, in the course of my practice, been obliged to travel over three or four counties, and examine all the registers and tomb-stones of all the parishes within 20 miles round the place of his ancestors' residence, and have not unfrequently been left with an old woman or an infirm and purblind sexton for some hours in a vestry. In some instances I have had these annals of the dead sent to an inn, to read them over at my leisure, where it has taken me three or four days to find an entry, which by the aid of a good index would have been explored in as many minutes. But when at length, after much labour, it was discovered, it has been so concise, as to the description of the persons, and so unsatisfactory in all respects, that it has been very seldom that I could say more with certainty, than that the birth, death, or marriage of one A. B. was entered in a certain register of a certain year; but whether the person that I expected to find, or any other, it was almost impossible to determine. If I sought for evidence of the birth of a child, his father's or his mother's name was often mis-spelt, and that with a variation in the course of two or three years: the day of the birth was scarcely ever mentioned, and that of the christening sometimes omitted; so that it was impossible to tell the age, or whether it was the first, second, or other child of its parents, equally as often doubtful whether it was at the time known to be the lawful or legitimate issue.

When we consider the very serious importance of these records in a country where the law of primogeniture prevails, and where the *heir* is to succeed to the estates of his ancestor (as indeed in what country is it not of high importance?) it should seem that it is a matter of great concern in the regulation of the police that some mode should be adopted by which it might be possible to secure to every one the clear proof, by documents the most indisputable, of his lineage, upon which his inheritance is to depend.

In former times, when a court of honour was maintained, with a regular survey of arms, there was less difficulty in establishing descents. These were indeed destroyed, and properly, because their powers were exerted by means which gave alarm to our ancestors for the security of their

liberties; but surely some mode may be adopted by which a man's possessions may be secured to his heirs at little trouble, and without any hazard of rendering insecure that liberty which is their best inheritance, and without which all others are worthless, because their tenure is then frail, and the enjoyment of them unsafe.

I have not now either leisure or legislative invention sufficient to point out what may be the best plan for regulating the proper entries of births, marriages, and deaths, for this purpose; but I submit that it would not be an ill mode of employing the leisure of some of your more able correspondents to consider by what means this end could be best obtained.

Without presuming to anticipate the plans of others, permit me to suggest that on every married person coming to settle in any parish he should within a certain time register his name in the parish books; that upon every marriage a certificate on parchment, with an indented margin, in which the name of the *parson* should be written, and cut through so as to serve as a check, and which should be duly numbered, dated, signed, and sealed\*, should be delivered to the parties. That upon the baptism of any child it should be produced, and an entry made of whether it be the first or other child, and the day of the actual birth, and whether legitimate or not. Upon marriage or death these certificates might be again produced and shortly entered, or referred to by proper pages and volumes. Every entry and document should be written at length, the registers should be kept under safe and proper eustody with regular indexes, and abstracts should be transmitted to some proper office either under the diocesan or metropolitan.

Some regulations of this kind were indeed introduced in the reign of Henry VIII. †, but they were perhaps not adequate to the purpose, and have been since very generally disused.

I know not that these, which are mere hints loosely thrown out, may not appear inadequate to the end sought for, and by some they may be even thought vexatious and troublesome; but I wish rather to elicit something from others than propose a regular plan myself; and when we consider with

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\* With an official or stamp seal.

† It is to *Lord Cromwell*, who about the year 1538 was Vicar General to that king, that we are indebted for the introduction of Registers.

what scrupulous anxiety, the legislature has provided for the registration of ships, in order to prove their *built*, and to secure the revenue and navigation laws from evasion, one may surely pronounce that the right, to men's lands, is at least of as great importance, and require as regular checks for its security ‡.

I am your's &c.

T. F.

York, Jan. 19, 1803.

VIII. *Whether a good Title can be made to a Purchaser of a Freehold Estate, by a Feme-Covert. who is married to an Alien.*

I BEG leave to propose to your Correspondents; the consideration of the following questions :

A. enters into an agreement with B. to sell his freehold estate. A. dies, and leaves two daughters, one married to an *alien* : Can a title be made, and *who must convey*? Does the king acquire any part of the estate? What estate has the wife of the alien?

Pump-Court, Temple.

JACOB.

IX. *What is the most advisable Mode of Conveyance, where Title-Deeds are lost.*

IF the title-deeds of an estate are lost or mislaid, and no information whatever can be given of them; What mode is the most advisable to make an effectual title to a purchaser?

A SUBSCRIBER TO THE LAW JOURNAL.

Warrington, Jan. 27, 1803.

‡ Perhaps, also, the regulations with regard to shipping-registers may point out some things worthy of observation, as to the matter in question.

ACCOUNT AND ANALYSIS  
OF  
NEW LAW BOOKS,  
WITH OCCASIONAL REMARKS.

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ARTICLE I.—NOTES of OPINIONS and JUDGMENTS *delivered in different Courts by the Right Honourable Sir JOHN EARDLY WILMOT, Knight, late Lord Chief Justice of the Court of Common Pleas, and one of his Majesty's most honourable Privy Council.* 4to. 403 pp.—Cadell and Davies. 1802.

THIS work, which is handsomely printed\* in quarto, with a portrait of the Chief Justice, engraved by Heath, from a picture by Dance, is introduced with the following concise preface :

“ Some apology may be thought necessary for the publication of so small a number of cases as compose the present volume. The fact is, that some of them having been handed about in manuscript, and having been made use of in court, a strong opinion was expressed by several gentlemen of the profession, that however few in number, they were too valuable not to be made public.

“ They were certainly not intended by the learned Judge for publication; and some of them are not perfect. There is no doubt but they would all have been equally valuable, if they had all received his last correction; and still more, if his modesty had permitted him to revise them with a view to publication. As it is, the profession and the public will make allowance for the disadvantages under which they are presented to them.”

The selection consists of judgments and opinions in the following cases, delivered in the respective courts to which the Chief Justice was occasionally called by the duties of his office,† viz.

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\* The Editor has not given an index to the work, nor are the cases accompanied with a marginal abstract of the points determined. This we hope will be attended to in a future edition.

† This volume also contains memoirs of his life, which were published separately.

- (b) Attorney General against Lady Downing and others (*statute of mortmain, devise to found a college*), in Chancery.  
 Lady Mansell against Sir E. V. Mansell and others (*power of jointuring*), in Chancery.  
 Bridgman against Green and others (*securities given to a servant*), in Chancery.  
 Answer to questions put to the Judges (*writ of habeas corpus*), House of Lords.  
 Evans against Harrison (*whether Dissenters finable for not serving the office of sheriff*), Commission of Errors.  
 Spencer against All Souls College (*founder's kin*), Visitor.  
 (c) Earl of Buckinghamshire against Drury (*jointure of infant a bar of dower*), House of Lords.  
 (d) Baddeley against Leppingwell (*devise in fee or for life*), King's Bench.  
 (e) The King against Almon (*a libel*), King's Bench.  
 (f) Roe *ex dem.* Dodson against Grew (*estate tail, or for life*), Common Pleas.  
 (g) Drinkwater against Royal Exchange Assurance Company (*policy of insurance*), Common Pleas.  
 (h) Keiley against Fowler (*bequest, when to take effect*), House of Lords.  
 (i) Wilkes against the King (*Solicitor General, &c.*), House of Lords.  
 (k) Bally against Wells (*covenant*), Common Pleas.  
 (l) Frogmorton *ex dem.* Robinson against Wharrey (*estate for life, or in tail*), Common Pleas.  
 (m) Low against Peers (*covenant against marriage*), Exchequer Chamber.

(b) Vide *Ambler*, 550; 3 *Vesey*, Jun. 714.

(c) Vide 5 *Brown's Parliamentary Cases*, 570; and *Hargrave and Butler's Co. Litt.* 366, n. 6.

(d) 3 *Burr.* 1533.

(e) This opinion was not delivered in court, the prosecution having been dropped.

(f) *Hil.* 7 *Geo.* III. 1767; 2 *Wilson*, 322. The latter part of this case is rather imperfect, and seems to contain only short heads of argument, which were probably filled up in the delivery.—*Editor.* But it is more full than the report in *Wilson*.—*Reviewer.*

(g) *Mich. Term*, 8 *Geo.* III. 1767; 2 *Wilson*, 363.

(h) 1st Feb. 1768, *Brown's Cases in Parl.* vol. vi. 309.

(i) 1768, *Brown's Cases in Parl.* vol. vi. p. 345.

(k) *Mich.* 10 *Geo.* III. 1769; 3 *Wilson*, 25.

(l) 1770, 2 *Blackstone*, 728.

(m) 1770, 4 *Burr.* 2225.



(n) Sayer against Masterman (estate tail, or for life),  
Chancery.

In a general view, perhaps, the most interesting opinion is that which was given in the House of Lords, on several questions put to the Judges by that house, upon the occasion of a bill, introduced by the popular party of the day, to alter the practice of the Court of King's Bench, on writs of *habeas corpus* in private cases, by allowing them to issue of course. We shall state the questions, with a short abstract of the answers to each, which occasioned the rejection of the bill, that our readers may see fully the nature of the subject.

House of Lords, *Die Martis*, 9<sup>o</sup> Maij, 1758.

Upon the second reading of the bill, intituled, "*An act for giving a more speedy remedy to the subject upon the writ of habeas corpus*", Sir John Eardley Wilmot, with the rest of the Judges, delivered his opinion, with his reasons, upon the following questions :

1st. "Whether in cases not within the act 31st Car. II. writs of *habeas corpus ad subjiciendum*, by the law as it now stands, ought to issue of course, or upon probable cause, verified by affidavit?"

Answer. "That it ought to issue only upon probable cause, verified by affidavit."

2d. "Whether in cases not within the said act, such writs of *habeas corpus*, by the law as it now stands, may issue in the vacation by fiat from a Judge of the court of King's Bench returnable before himself?"

Answer. "In the affirmative."

3d. "What effect will the several provisions proposed by this bill, as to the awarding, returning, and proceeding upon returns to such writ of *habeas corpus* have in practice; and how will the same operate to the benefit or prejudice of the subject?"

At the request of the Judges this question was waived by their Lordships.

4th. "Whether at the common law, and before the statute of *habeas corpus* in the 31st of king Charles II., any, and which of the Judges could regularly issue a writ of *habeas corpus ad subjiciendum* in time of vacation, in all or in what cases particularly?"

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(n) June, 1757, *Ambler*, 344. This is the only case in this volume which is not printed from Sir Eardley's own notes; but it is a case of importance, and is not fully reported in *Ambler*.

5th question. "Whether the Judges at the common law, and before the said statute, were bound to issue such writs of *habeas corpus ad subjiciendum* in time of vacation, upon demand of any person under restraint, or might they refuse to award such writ, if they thought proper?"

*Answer.* "I think the Chief Justice of the court of King's Bench, and the other Judges of that court, did, in fact, issue them in vacation before 31 Car. II., in criminal cases, and might do so on principles of law; possibly it might be done at first for the king only, and afterwards for the subject; but I do not think there was any settled course of practice observed in granting them, before the statute; and that such unsettled mode of practice produced the statute in the cases of bailable offences: and, in cases out of the act, usage has now fixed a regular course or manner of granting them; but I desire to be understood, that the present usage of granting them must be supported upon such principles of law as would have supported the granting them when such usage first began. And I think they were not bound to grant them upon the demand of any person under restraint at the common law, and before the statute, any more than they are bound to grant them now upon demand. There must have been some case made, before they could be bound to grant them, at any time."

6th question. "Whether the Judges at the common law, and before the statute, were bound to make such writs, so issued in time of vacation, returnable "*immediatè*;" and could they enforce obedience to such writ so issued in time of vacation, if the party served therewith should neglect or refuse to obey the same, and by what means?"

*Answer.* "To the first branch of this question in the negative; to the latter—I think the Judges cannot enforce obedience to any writs of *habeas corpus* issued in time of vacation (whether they issue in cases within the 31st Car. II., or in cases out of that act), if the party served therein should neglect or refuse to obey the same, by any means, but by an attachment for a contempt which can only issue out of court in term time."

7th question. "Whether, if a Judge before the said statute, should have refused to grant the said writ, upon the demand of any person under any restraint, the subject had any remedy at law, by action or otherwise, against the Judge for such refusal?"

*Answer.* "I think that the subject had no remedy at law, by action or otherwise, against the Judge for such refusal. The denying a writ stands upon the same ground as any other breach of duty."

8th question. "Whether in case a writ of *habeas corpus ad subjiciendum* at the common law be directed to any person returnable "*immediatè*," such person may not stand out an *alias* and *pluries habeas corpus*, before due obedience thereto can be regularly enforced by the course of the common law?"

*Answer.* "I am of opinion, that in case a writ of *habeas corpus ad subjiciendum*, at the common law, be directed to any person returnable

"immediatly," the court, upon the affidavit of the service of the writ, will grant a rule for an attachment. By the course of the common law, he might have stood out an *alias* and *pluries*, but by practice the course is now altered; and in many cases the court has enforced obedience to a writ for private restraints in the first instance by attachment, for the furtherance of justice. The method of proceeding by *alias* and *pluries* is gone into disuse in almost all cases, and the process by attachment substituted in its stead; and that practice stands upon this legal principle, that disobeying the king's writ is a contempt, and equally a contempt to disobey the first writ as the last."

9th question. "Whether the said statute of the 31 Car. II., and the several provisions therein made for the immediate awarding and returning the writ of *habeas corpus*, extend to the case of any man compelled against his will, in time of peace, either into the land or sea service, without any colour of legal authority; or to any cases of imprisonment, detainer, or restraint whatsoever, except cases of commitment for criminal, or supposed criminal matters?"

*Answer.* "I think they do not extend to the case of a man so compelled; because the person who compels a man against his will, in time of peace, either into the land or sea service, without any colour of legal authority, is the criminal, and not the man impressed. And I think that act doth not extend to any cases of imprisonment, detainer, or restraint whatsoever, except cases of commitment for criminal or supposed criminal matters."

10th question. "Whether in all cases whatsoever the Judges are so bound by the facts set forth in the return to the writ of *habeas corpus*, that they cannot discharge the person brought up before them, although it should appear most manifestly to the Judges, by the clearest and most undoubted proof, that such return is false; in fact, that the person so brought up is restrained of his liberty by the most unwarrantable means, and in direct violation of law and justice?"

*Answer.* "I am of opinion, that in no cases whatsoever the Judges are so bound by the facts set forth in the return to the writ of *habeas corpus*, that they cannot discharge the person brought up before them, if it shall most manifestly appear to the Judges, by the clearest and most undoubted proof, that such return is false in fact, and that the person so brought up is restrained of his liberty by the most unwarrantable means, and in direct violation of law and justice. But by the clearest and most undoubted proof, I mean the verdict of a jury, or judgment on demurrer, or otherwise, in an action for a false return. And in case the facts averred in the return to a writ of *habeas corpus* are sufficient in point of law to justify the restraint, I am of opinion that the court or judge, before whom such writ is returnable, cannot try the facts averred in such return by affidavits, in any proceeding grafted upon the return to such writ of *habeas corpus*."

"The clearest and most undoubted proof in the law, is the verdict of a jury; and if the facts set forth in a return are disproved by

verdict, I think the Judges are not bound by those facts, in any case whatsoever, from discharging the person brought up before them ; but as I presume the question means ' proof by affidavit,' in order to examine the truth or falsity of a return, I shall consider the question in that view. To get at the bottom of it, the nature of this writ must first be considered ; it is a demand by the king's supreme court of justice to produce a person under confinement, and to signify the reason of his confinement."

It will be seen from the bare statement of these questions, that this opinion, which occupies 53 pages, contains much interesting and useful matter, and embraces almost all the law upon the subject. The discussion of them is conducted with great learning and ability, and with a spirit which, while it evinces a due sense of the blessings of freedom, shews a firm adherence to those wholesome regulations by which alone personal and political liberty can be preserved to the subject, free from the dangers of insubordination and anarchy.

Thus, in his answer to the first question, he observes, that

" A writ which issues upon a probable cause, verified by affidavit, is as much a writ of right, as a writ which issues of course.

" There are many other writs, which are all writs of right, but a proper case must be laid before the court by affidavit, before the parties praying such writs, may be intitled to them. They are the birth-right of the people, subject to such provisions as the law has established for granting them. Those provisions are not a check upon justice, but a wise and provident direction of it.

" The very learned and able men who framed the 31 *Car. II.* could not avoid taking these writs of *habeas corpus* for private custody into their consideration. Three or four years before that act, there had been two very great cases extremely agitated in *Westminster Hall*, upon writs of *habeas corpus*, for private custody, viz. the cases of *Lord Leigh*, 2 *Lev.* 128, and *Sir Robert Viner*, lord mayor of London, 3 *Keb.* 434, *et seq.* 2 *Lev.* 128, *Freem.* 389. But they wisely drew the line between civil constitutional liberty, as opposed to the power of the crown, and liberty, as opposed to the violence and power of private persons. They thought this power of judging might be abused in favour of the crown, but they saw no danger of an abuse of it as between one subject and another ; and therefore they applied the remedy to the evil they had seen and experienced, and left the law as they found it, in respect of private persons.

" There is no such thing in the law as writs of *grace and favour* issuing from the Judges ; they are all writs of right, but they are not all writs of course.

" Writs of course are those writs which lie between party and party, for the commencement of civil suits ; and if they are sued

without a good foundation, the common law punishes the plaintiff for suing out the writ vexatiously, by amercing him '*pro falso clamore.*' And by the statute law, he is to pay the costs of the suit. But the writ of *habeas corpus* is not the commencement of a civil suit, where the party proceeds at the peril of costs, if his complaint is a groundless one: it is a remedial mandatory writ."

"And as all these remedial mandatory writs were originally rather the suits of the king than of the subject, the king's courts of justice would not suffer them to issue upon a mere suggestion, but upon some proof of a wrong and injury done to a subject.

"Writs of *habeas corpus*, upon imprisonment for criminal matters, were never writs of course, they always issued upon a motion grafted on a copy of the commitment; and cases may be put in which they ought not to be granted; 1 *Lev.* 1.; *Comb.* 74. *Habeas corpus* was denied to one committed to bridewell for lewdness, 3 *Bulk.* 27; 2 *Mod.* 306. If malefactors, under sentence of death, in all the gaols in the kingdom, could have these writs of course, the sentence of the law might be suspended, and perhaps totally eluded by them."

We are sorry we cannot pursue this extract further, but the tenor of the whole will be found equal in spirit and ability, and highly honourable, both to the system of British jurisprudence, and to the Judge, who is detailing its practices and expounding its principles.

The next case which follows, *Evans v. Harrison*, is also of great general concern. It turns upon the question, Whether a dissenter, who, by the test and corporation acts, is excluded from holding any public office of trust in a corporation, can, upon being elected sheriff for the city of London, be made subject to a penalty of 600*l.*, by a bye-law, inflicting the same upon every person elected to the office of sheriff, who shall not appear before the court of the lord mayor and aldermen, at the first court after notice of his election, and become bound for his appearing, and taking the office upon the vigil of *St. Michael* then next following? And the Judge, and the rest of the court, determined that he cannot.

This is indeed a masterly and liberal exposition of the statute 13 *Car.* II. st. 2, c. 1, called *the corporation act*; and of the toleration act, 1 *William and Mary*; and also of the 5 *Geo.* I., c. 6, intitled, *An act for quieting and establishing corporations.*

*The King* against *Almon* is a third case in this excellent selection, which will be read by the constitutional lawyer with great pleasure, as it contains much of the law as to the power of the court of King's Bench, in proceeding by at-

tachment against a person for publishing a libel on the Chief Justice of that court, reflecting upon his conduct in the exercise of his office. In this is also incidentally considered, the question as to the court determining upon facts appearing on affidavits between the parties, without the intervention of a jury, and with what limitation the rule *ad quæstionem facti non respondent iudices*, must be understood.

*Wilkes v. the King*, in error, is another case of a somewhat similar kind. On these writs of error the questions were,

"1st. Whether an information, filed by the king's solicitor general, during the vacancy of the office of the king's attorney general, is good in law ?

"2dly. Whether in such case it is necessary, in point of law, to aver upon the record that the attorney general's office was vacant ?

"3dly. Whether a judgment of imprisonment against a defendant to commence from and after the determination of an imprisonment, to which he was before sentenced for another offence, is good in law ?"

The result of this case, as is well known, was in favour of the crown.

In every point of view in which we consider these cases, we must applaud the Editor for giving them to the public. As it respects the character of an able lawyer, an elegant scholar, and an excellent man, such as *Chief Justice Wilmot* appears to have been, we cannot but think, that this selection, by which is handed down to posterity a true picture of a vigorous mind, glowing with warm and virtuous feelings, is the fairest monument that can be raised to his memory. It is true, the contents of this volume are not multifarious ; but the cases, though few, are important, and they embrace many general principles. The various knowledge which is very generally displayed in the composition of the opinions, throws a strong light upon every prominent part, and aided by a style more rhetorical and figurative \* than is to be found in ordinary reports of judicial decisions, gives an air of novelty and interest to the whole, which cannot fail to render them acceptable to the student and the general reader, as well as to the lawyer, who, were they even less alluring, would necessarily refer to them for information alone. In this respect, however, these cases, as to the points which are decided in them, add but little to the general stock of legal authorities, since most of them have been already ably reported by *Burrow*, *Wilson*, and others.

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\* Not having received the Author's last corrections for the press, the style is not uniformly correct.

But they are further useful, not only as they give us the mind and character of the man, but as they enable us to form an accurate estimate of the respective merits and fidelity of each of these reporters. They afford us the means of determining precisely what we lose by having the judgments of the sages of the law thus detailed at second-hand, stripped of the eloquence, and, in many places too, of the happy illustrations\* with which they are accompanied in the actual

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\* Take an instance, by comparing the following passage from *Burrow's Reports*, with that which corresponds to it, in the notes of the learned Judge.

"Now I collect that intention (he said), 1st, from the devise to *Clement Boreham*; and then from the devise to *Sarah Boreham*. He devises to *Clement* expressly for and during the term of his natural life; and after his decease to *Robert Sabill* and *Jeremiah Boreham*. But in the devise to *Sarah*, he omits the words, "for and during her life;" which words, it must be supposed, he would have inserted, in case he had intended to give her only an estate for life, because he had just before done so, in the preceding devise to *Clement*. It is plain, that by giving it to her *generally*, without having any such restrictive words as he had before added to his devise to *Clement*, that he meant to give her the absolute property; he meant to devise it *ut bona et catalla*, as a man unacquainted with the law might very naturally do. And his making no limitation over in this devise to *Sarah*, is an additional and auxiliary proof of his intention to give it to her absolutely. But the material circumstance is, the condition he has annexed to her estate, of paying an annuity to her sister *Elizabeth Boreham*."—*Burrow*, 1541.

"I collect that intention from the different penning of the devise to *Clement Boreham*, with the limitation over upon it, and of the devise to *Sarah Boreham*. When the testator meant to give an estate for life, he has said so; and has expressed that intention very particularly, by words apt and proper for that purpose—"for and during the term of his natural life, paying thereout 40s. a year to his grandson *Robert*;" and finding from that partial disposition that he had something left him still to give, he devises that house, after the death of *Clement Boreham*, "to be equally divided between *Robert* and *Jeremiah Boreham*;" but in the devise to *Sarah*, he omits the words "for and during the term of her life," which he would certainly have inserted if he had intended it. This difference of expression paints the distinction which his mind had taken between giving part of his estate in the thing devised, and his whole interest in it. The devise to *Sarah* follows the devise to *Clement* immediately: if he wrote, he could not but see them; if read to him, he must have heard the sound of the words; all rested with him: for though a devise to A. generally, unassisted by other clauses which mark the intention,

delivery. But while we regret what we have lost, we learn to value what we have saved from the ravages of time, and to respect those who, in preserving these precious reliques of the wisdom of our ancestors, though they have not been able to hand them down to us with all their living freshness, have yet given us a faithful abstract of their excellence. More we could not expect from them, and perhaps, in general, ought not to desire; since in the variety of cases which have been reported, it would have been, in many instances, imposing a laborious task upon the student to have left him to extract the essential points of the case from the luxuriant abundance of illustrations with which the eloquence of a *Mansfield* or a *Camden* might have enriched their opinions, in that anxiety which they so often displayed to convince those whose interest made them slow to persuasion, and to render even the losing party satisfied that justice was done, and that the spirit of truth guided their decisions. This aim we see also throughout the opinions of Lord Chief Justice *Wilmot*: and we have remarked it in other eminent characters of the present day. Judges of this class are not content with declaring the law as it is, but they wish

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would give only an estate for life, yet it is plain the testator did not think so; for if he had, it was quite unnecessary and nugatory to have inserted the restrictive words 'for life.' This is therefore one decisive mark drawn from the will itself, to shew that when the testator meant to give an estate for life, he said so; and consequently, that when he gave the thing generally, he did not mean an estate for life only: and indeed I believe all men, unacquainted with the law, when they mean a restriction they express it; and when they give the thing generally, they mean the absolute property of the land, as much as of a personal chattel; and the custom of devising which prevailed antecedent to the 32d Hen. VIII., and was a relic of the Saxon law, was to devise the lands *ut bona et catalla* \*. Another circumstance of intention is limiting the estate over upon the first devise, where it is expressly given for life, and making no limitation over upon the second; indeed he might intend to limit a remainder over on one estate, and not on the other, and therefore this alone would not be sufficient to warrant the inference of a different intention; but, it still strengthens the other evidence, and acts as an auxiliary proof of the intention. But the most material passage in the will, from whence I collect the intention, is the condition of paying the annuity to *Elizabeth Boreham*."—*Wilmot's Opin.* p. 234.

\* The omission of this reference to customary devises is a defect in the report of *Burrow*, which, in other respects, is very faithful.—*Reviewer*.



also to satisfy the suitors that justice and law are the same thing. They review every argument with fairness; they consider the strong points on each side of the case with candour; and they never elude them with sophistry, or pass them over with neglect; but meet them with the full and explicit answer which they require. This is in the true spirit of justice; and though it may add to the labour of the Judge, it increases also the sanctity and honour of the judicial character, which stands no where higher than in this country.

On this subject we perhaps should dwell too long, were we to indulge our own feelings. Our readers will pardon us if we have already passed the due limit of a review; but we felt that we had received a treat in the opening of our career, which we do not often expect, since the remains of judicial eloquence are few. We refer our readers to the work itself, to confirm all that we have said of it. And in concluding, we can only wish, as we have mentioned the venerable name of *Mansfield*, that it may be, though we fear it is not, in the power of the noble lord who inherits his title, to afford us a treat of a similar kind\*, and give to the world, from the notes of that great Judge himself, a few lasting specimens of that eloquence which adorned the judgment seat of this kingdom for upwards of thirty years,† and rendered him the delight and ornament of the age in which he lived.

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\* If it were ever the practice of this great Judge, whose eloquence was as ready as it was elegant and convincing, to prepare a written copy of his judgments, it is probable they were all lost, when his library was burnt by the rioters in 1780.

† From 1756 to 1788.

# LEGAL BIOGRAPHY.

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## N<sup>o</sup> I.

**WE** trust that our readers will concur with us in opinion, that we shall confer a very important service on the profession by allotting part of the **LAW JOURNAL** to the insertion of Biographical Memoirs of distinguished Lawyers. It has often been lamented, that a digested series of legal Biography has never been collected. Such a work would, indeed, be not only curious and acceptable to the profession at large, but must afford most useful information to the student, who would thus have presented to his immediate view the labours and difficulties through which the illustrious sages of the law rose to the highest honours of the country. It would shew him, that talents, without unremitting and well-directed exertions, will not accomplish the end, which all, who are embarked in an honourable profession, must desire; and it would also present the most unvaried system of inflexible integrity, of which the juridical annals of any country, ancient or modern, can boast. It would excite the most inspiring emulation, and exhibit the most instructive wisdom.

We shall endeavour, as far as lies in our power, to remove the deficiency\*, and we now present to our readers some account of **LORD KEEPER COVENTRY**. The author of the following Memoir was evidently a cotemporary of this great lawyer, and although his diction is obsolete, we have preferred presenting it in its original form, rather than attempt to give it a more polished appearance, which might only weaken its force and impair its authenticity.—We have supplied, by the addition of notes, the explanatory information which appeared necessary, as the Memoir is not sufficiently particular in dates, or the statement of facts, to be in all points satisfactory,

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\* For this purpose we shall be happy to receive from our readers the communication of any materials which it may be in their power to afford us. Many curious documents must, without doubt, be in the possession of the descendants of those who have in former times attained to the dignity of the bench, and in a series of legal biography, those also who *have been* greatly eminent at the bar ought not to be omitted.

## OF THOMAS LORD COVENTRY,

*Late Lord Keeper of the Great Seale of England,**Some notable Observations in the Course of his Life and  
ultimum vale to the World.\**

TO trace him in the beginnings and first exposition, hee was the sonne of a judge † and of the Common Pleas, a gentleman by birth and education. The acquiring of his father in the progress of his profession (as it seemes) were not much, and in that access (as I may call it), which commonly men of the law (attaining to that dignitie) leave to their heires in the new erection of a family. Wherefore I conceive it probable, that the sonne did not declayne that profession wherein the father concluded, but began there to buyld on that foundation, where himselfe had made his first approaches.

He was of the inner house of court ‡, and noe soonere by an indefatigable diligence in study attained the barr, but he appeared in the lustre of his profession above the common expectation of men of that forme, which he made good in the manifestation of his exquisite abilities soe soone as he came to plead. For the orator

\* Copied from an original manuscript.

† Thomas Coventry, the father of the Lord Keeper, was born in 1547, and was educated at Baliol College, where he took a degree of Batchelor of Arts, in 1565. He afterwards entered as a student of the Inner Temple, and in the 38th year of queen Elizabeth's reign was chosen autumn reader of that house; but a great plague then reigning in London, his readings did not commence until the Lent following. On the 17th of May, 1603, (1 Jac. I.), he was sworn serjeant at law, having been elected to that degree by queen Elizabeth; and in 3d Jac. I. was appointed king's serjeant, and, in the same year, one of the justices of the court of Common Pleas, in which post he continued until his death, which happened on the 12th of December, 1606.

‡ Lord Keeper Coventry was born in 1578, and at the age of fourteen became a gentleman commoner of Baliol College, Oxford, where he continued three years, and was then entered a member of the Inner Temple. In 14 James I. he was chosen autumn reader of that society; and on the 17th of November, of the same year, was elected recorder of the city of London. On the 14th of March following he was made solicitor-general, and received the honour of knighthood two days afterwards at Theobald's. He was appointed attorney-general by King James I., in the 18th year of his reign.

at the barr hath much the start of a chamber-man, but he was *utrumque paratus*, and here hee first began to grow into the name of an active and pregnant man.

Hee married and interred his first love in the fruyt of his *primogenitus*, now surviving, a baron and peere of the realme. His wife expiring, hee plighted his faith to the cittie (for he became recorder by a publique suffrage and suite of the citizens), and espoused for his second wife \* the widow of a citizen, lovely, young, rich, and of good fame, in whom he became the father of many hopefull children of either sexe; all married richly in his life, or left in the waye of a noble substance. Wee may represent his happiness in nothing more than in this, that London had first given him the handsell of a place both honorable and gainefull, together with a wife as loving, as himself was uxorious, and of that sort which are not unaptly styled housewives; soe that these two drew diversely, but in one way, and to one and the selfe same end, hee in the practice of his profession, shee in the exercise of her domestic: for they that knew the discipline of his house averr, that hee waved that care as a contagious distraction to his vocation, and left her only (as a helper) to manage that charge, which best suyt to her conversation.

The next stepp of his, however, was in the service of the late king of ever blessed memorie, as his solicitor, and successively his attorney-generall, both places of trust and of great income; neither did he then leave the cittie, or the cittie desert him, for by the marriage of his eldest son there † (the now baron) hee heaped up to his other acquisitions a bulke of treasure of no common summe, and leaving it so, that it may well fall into the question, whether he was more beholden to the cittie, or the cittie to him; or thus, whether more may be attributed to his fortune than merit. Moreover, they ascribe much to the blessing of his house, that they both

\* His first wife was Sarah, daughter of Edward Sebright, of Bedford, in the county of Worcester, and sister to Sir Edward Sebright, by whom he had issue Thomas, his successor. By his second wife Elizabeth, daughter of John Aldersey, of Spurstow, and widow of William Pitchford, Esq. of the city of London, he had four sons and four daughters. Sir John Coventry, the eldest son of this second marriage, was the person upon whom the violent and inhuman outrage was committed by Sir Thomas Sandys, and three others, at the instigation of the Duke of Monmouth, for words spoken in the House of Commons, and which occasioned the act of parliament "*for preventing malicious maiming and wounding*," since called the *Coventry Act*. Elizabeth, the youngest daughter, was married to Sir John Packington, and is said to have been the author of *The Whole Duty of Man*.

† Thomas, the second Lord Coventry, married Mary, daughter of Sir William Craven, Knight.

were constant in their religion, and serious in their assiduous devotions in the sett and fixed forms of the church prayers, whereunto the whole family were commendably assembled.

In the first year of our now gracious sovereigne, my lord of Lincolne (of the clergy) being removed, Sir Thomas Coventrie was designed at Salisbury for the seale\*, by the king's most excellent judgment, as the onely person of the times capable of so high a place, with the assistance of the duke of Buckingham, and one that was a noble preferrer of men of meritt; and to the further augmentation of his house, hee was shortly thereupon created baron of Alisbury†, in which dignity and place he continued without interruption, untill death summoned him to a great pitch of glorie, in an age plentiful in years, abundant in wealth, felicious in offspring, and, that which is more honorable, a noble fame; not that hee passed on unaccused, for envy is a constant follower and persecutor of all greatness, and [*distraction*] an utter enemy of desert.

"The chiefe charge against him was that of Bonham Norton's, wherein the best and most impartial judgments consent, that his accuser and client was much to blame in the error of his accompt, betweene a judge of equitie and a quondam advocate, and in a case

\* He was made lord keeper of the great seal of England by king Charles I. on the 1st of November, 1625.

† On the 10th of April, 1628, he was made a baron by the title of Baron Coventry of Aylesborough, in the county of Worcester. In an elegant preamble to the patent, the following weighty reasons are stated for his advancement:

"Rex, &c. omnibus, &c.—Officio et curæ regali nihil magis ar-  
 "bitramur convenire, quam virtutum præmia viris illustribus rite  
 "disponere, ac illos honoribus attollere qui de rege et republicâ op-  
 "time meruerunt: perspicimus enim coronam nostram regiam  
 "quamplurimum honorari et locupletari, cum viros cordatos con-  
 "silio, prudentiâ, virtutibus illustres, ac presertim in administran-  
 "dâ justitiâ strenuos et inaignes, ad honoris et dignitatis gradus vo-  
 "camus et erigimus. Nos igitur in personâ prædilecti et perquam  
 "fidelis consilarii nostri Thomæ Coventry Militis, custodis magni  
 "sigilli nostri Angliæ, gratissima et dignissima servitia, quæ idem  
 "consiliarius noster tam præcharissimo patri nostro Jacobo Regi  
 "beatæ memoriæ, per multos annos, quam nobis ab ipsis regni  
 "nostri primis auspiciis, fidelissime et prudentissimè præstitit et  
 "impendit, indiesque impendere non desistit: nec non circum-  
 "specionem, prudentiam, strenuitatem, dexteritatem, et fidelita-  
 "tem ipsius Thomæ Coventry Militis erga nos et coronam nostram,  
 "animo benigno et regali intimè recolentis pro gratiæ nostræ erga  
 "præfatum consiliarium pignore: nec non virtutum et bene meri-  
 "torum ejusdem encomio posteris suis relinquendum, ipsum in pro-  
 "cerum hujus regni nostri Angliæ numerum ascribendum decrevi-  
 "mus.—Sciatis itaque, &c."

where the accuser had before received ample satisfaction by the advantage and rigour of the law \*. More than this, I find not much of regard charged on his sinceritie, besides those of vulgar mindes and private interests, where men are ever aforehand in flattery of themselves in opinion of that cause which goes not on their side, and that which hath any relation to their friends.

The character of his outward man was this; hee was of a middle stature, somewhat broad and round faced, of hayre black, and upright in his comportment and gesture; of complexion sanguine, and of a comely aspect and presence. Hee was of a very fine and grave elocution, in a kind of graceful lisping, soe that where nature might seeme to cast something of imperfection in his speech, on due examination, she added a grace to the perfection of his delivery; for his words rather flowed from him in a kind of native pleasingness, than by any artificial help or assistance. Hee was of a very liberal access and affable, and as hee was of a very quick apprehension, soe was he of an exceeding judicious and expeditious dispatch in all affairs either of state or of the tribunal; of hearing, patient, attentive, and that which is not usually incident to persons of dignitie and place, seldome in any distempered mood or motion of choler; and it was none of his meanest commendations, that he was a helper or coadjutor, rather than a daunter, of counsel at the barr, and understood better what they would have said in the case, than what sometymes they did say for their clyents; soe that there appeared in his constitution, a kind of natural and unaffected inclination to creep into the good opinion of all men, rather than any affected greatness to discountenance any, but never rashly to discontent many.

Through the whole course of his life, his fortune was so obsequious, that it seemes she always waited upon him with a convoy; for in all the steps of his rise, he had ever an even and smooth passage, without any rubb or mate in the check.

For his erudition and acquisitions of art (though all knew he was learned in the sciences, and most profound in his profession) yet such was the happiness of his constellation, that he rather leaned to his native strength, than depended on any artificial relyance.

Without doubt hee was of a most solid and immoveable temper, and voyd of all pride and ostentation; neither was he ever in any umbrage or disfavour with his prince; an argument both of his wisdom and sinceritie; neither in any fraction with his equals, worthis of exception: for that of my lord of Suffolke's business, was

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\* We have examined the reporters of the time in order to give some account of the case here alluded to, but can only find a short reference to it in *Lev. 179, Middleton v. Shelley*, where it is said, that an agreement subsequent to a decree shall stay the execution of it; and that it was so decreed in *Lord Coventry's* time, in *Bonham Norton's* case. This probably is the suit, which gave rise to the charge against Lord Coventry, noticed by his biographer.

an art of his that shewed the world, in how little esteeme he held greatness that would juttle and stand in competition with justice: and it is remaining among the best of his memorials, that he always stood impregnable, and not to be overcome by might. Amongst all and the many felicities of his life, that of his short sickness, and the willing embracement of death with open armes, were of the most remarkable observation, for it is *finis qui coronat opus*, and changes a mortalitie into that of immortall glorie, for his sickness was not continued with any lingering or loathsome languishing, nor so precipitate that it bereaved him of the abilitie of disposing of his estate, to the contentment of his posteritie, or hindered the composing of his thoughts to another and better worlde.

If then in the brieve collection of the state of this noble man's fortune, it may fall into suspicion that I had some relation to his person, or in some one respect or other was obliged to him, I assume the liberty to tender this testimonie to the world, that I never had reference, at any tyme, to his service (onely in such addresses as fell to my lot as a suppliant). I had ever the honor of a free access, with libertie to speak as I could, and as occasion and the cause required, but that which best may satisfye the suspicious, that I have not given myselfe the least scope of partialitie, or flattery, either in favour or affection, it is that I believe noe subject ever suffered in that degree in losse of estate, as I myselfe have endured, and onely by a rule of his owne, in suspending my suyte in the starr chamber, (the cause depending before in chancerie) untill it had there a final determination, whereby I was debarred from detecting as villainous a practice as this age hath heard of, unless I would have waved my chancery suyte without further expectation to be releevd in equitie, which (as I then apprehended) were some conditions of some hard measure, though by good reasons I was afterwards persuaded, it stood not with the honor of both courts, that two suites for one and the self same title, should be on foot together; yet was it then informed by his noble successor (and then of my counsell) that the cause depending in the starr chamber, was not for the title questioned in chancerie, but for privie combination and practice, committed in a triall at law, some yeares before, at an assise at Sarum; to which his lordship replied, that true it was the tytle was not directly questioned in the starr chamber bill, yet did it conduce thereunto, and so reported by the chiefe baron Walter, that in case the defendant came to be censured by that court, it utterly destroyed both the former verdict, and the tytle in law.

And thus much for myne owne apologie; and soe to proceed: where I must not leave out of the number of his vertues, that he was ever more led by a very noble conduct in the choyce of his servants, which I am bold to say were gentlemen of civilitie, readye to perform all the good offices of urbanitie, in presenting the meanest suytors to their lord, which (as I have taken it as an observation of myne owne) was infused (if I be not deceived) by his own instruction and discipline.

The faculty of his dispatch in court is best presented in this: that

at his first accession to the seale, hee found two hundred causes on the paper ready for hearing, all which (with such as fell in his way) he determined within the yeare, soe that the clients of the court did not languish in expectation of the issue of their causes.

Where it falls into observation, that this high place is rarely well served, but by men of law, and persons of deepest judgment, in the statute and common lawes of the land, whereby they may distinguish of cases, whether they lye proper in that court, to be releaved in equitie, without intrenching on the jurisdiction of the kingdome, which is the old inheritance of the subject,

And thus have I briefly traversed the life and fortunes of this noble lord, I shall now close it up in the judgment of some notable personages and counsellors of state, which with one consent, and within a few days of his decease, concluded thus :

That the king had lost a most noble servant of state, irreproveable in his place, and in his life and conversation, of a very noble report, and that the kingdom suffered in the losse with the king, in this, that the roome of the chancellor, hath not been supplied with his life, within the memory of our fathers : and (if report be not injurious to truth) his majesty, in recommending the seale to this noble gentleman, enjoyned him to tread in the stepps of his predecessor, *Memoria justorum remanebit in aeternum*.

Now to this little modell of his praise and vertue, I know somewhat of course may be expected to bee said of his vices, for man is composed of humane flesh and frailtie, and the best of men are all subject unto error. *Justus septies in die labitur*.

And who is he that feeleth not in himself the force of his owne corrupt nature, and the contagion of our first father's transgression, streaming through the veines of their infected posteritie? Surely modest men may say, that this noble man had not the priviledge of canonization, to bee sainted in earth, and that nothing of blackness could be laid to his eye, during the whole course of his life : but when wee consider his estate, now it is translated to another world, *livor post fatum quiescit*, and that envy which is soe emphatically fabled in *avarum et invidum*, becomes checked by the respect of prophanation, and feare of trampling on the sacred ashes of the dead, yet I am not ignorant what murmurs have passed on his integritie tacitly, charging it in implicit tearmes of playing the game dexterously and closely, and that if our faults could be all pencilled in our foreheads, this deceased lorde might then beare in front, sufficient arguments of his humane frailtie.

However, thus much I say, that could he have beene painted to the life (and I believe it) wee should not find in him much of blemish, and that the maine objection vulgarly inferred on the amassing of his wealth, could not well be done in justice, might be answered to the full in this, that his patrimonie considered, and that it was the gainefullness of the places he passed through, together with the greate fortune of his owne and his sons intermarriages, all concurring and falling into a frugall family, might soone wipe away all imputations of the most malignant, and perswade even [*distractum*] itselfe to suffer



him to rest in peace, and (as wee may charitably belceve) in glorie, as his posteritie surviving, remaines in his honor and fortunes .

\* He died at Durham House, in the Strand, on the 14th of Jan. 1639—40, and was buried at *Croom D'Abitot*, in Worcestershire, near his father, on the 1st of March following, after holding the seals sixteen years. Lord Clarendon, in his history of the rebellion, has drawn his character with so much force, that we shall conclude with an extract from it. "He discharged all the offices he went through with great abilities and singular reputation of integrity, and he enjoyed his place of Lord Keeper, with an universal reputation (and sure justice was never better administered) for the space of about sixteen years, even to his death, some months before he was sixty years of age. Which was another important circumstance of his felicity, that great office being so slippery, that no man had died in it before, for near the space of forty years: nor had his successors, for some time after him, much better fortune.

"He was a man of wonderful gravity and wisdom, and understood not only the whole science and mystery of the law, at least equally with any man who had ever sate in the place, but had a clear conception of the whole policy of the government both of church and state, which by the unskilfulness of some well meaning men, justled each other too much. He knew the temper, disposition, and genius of the kingdom most exactly; saw their spirits grow every day more sturdy, inquisitive, and impatient; and therefore naturally abhorred all innovations; which he foresaw would produce ruinous effects. Yet many who stood at a distance, thought he was not active and stout enough in opposing those innovations. For though, by his place, he presided in all public councils, and was most sharp sighted in the consequence of things, yet he was seldom known to speak in matters of state, which, he well knew, were for the most part concluded before they were brought to that public agitation: never in foreign affairs, which the vigour of his judgment could well have comprehended: nor indeed freely in any thing, but what immediately and plainly concerned the justice of the kingdom; and in that, as much as he could, he procured references to the judges. Though in his nature he had not only a firm gravity, but a severity, and even some morosity, yet it was so happily tempered, and his courtesy and affability towards all men so transcendant, and so much without affectation, that it marvellously recommended him to men of all degrees, and he was looked upon as an excellent courtier, without receding from the native simplicity of his own manners.

"He had, in the plain way of speaking and delivery, without much ornament of elocution, a strange power of making himself believed (the only justifiable design of eloquence); so that though he used very frankly to deny, and would never suffer any man to depart from him with an opinion that he was inclined to gratify, when in truth he was not; holding that dissimulation to be the worst of lying: yet the manner of it was so gentle and

"obliging; and his condescension such to inform the persons whom he could not satisfy, that few departed from him with ill will and ill wishes.

"But then this happy temper and these good faculties rather preserved him from having many enemies, and supplied him with some well-wishers, than furnished him with any fast and unshaken friends; who are always procured in courts by more ardour and more vehement professions and applications than he would suffer himself to be entangled with: so that he was a man rather exceedingly liked than passionately loved; insomuch that it never appeared that he had any one friend in the court, of quality enough to prevent or divert any disadvantages that he might be exposed to. And therefore it is no wonder, nor to be imputed to him, that he retired within himself as much as he could, and stood upon his defence, without making desperate sallies against growing mischiefs, which he well knew he had no power to hinder, and which might probably begin in his own ruin. To conclude, his security consisted very much in his having but little credit with the king; and he died in a season the most opportune, in which a wise man would have prayed to have finished his course, and which, in truth, crowned his other signal prosperity in the world."

#### TO CORRESPONDENTS.

The opinions of Mr. B. and Mr. H. are received; but as our correspondent affords us no sufficient authority for publishing the names of the writers, they will be received as anonymous essays, important only for their intrinsic merits. Future Communications from H. of P. will be attended to.

M. G., to say the least, seems to write in a proper spirit, and will not be rejected.

The ANA, proposed by B., will deserve to be executed by other than young students. His first article is anticipated by a note in the last, the fourteenth, edition of the *Commentaries*, to which, and to Mr. Sedgwick's work, we must refer him. With the rest we recommend him to grapple *proprio Marte*, and proceed in bringing his plan to some degree of perfection.

C. and K., (Temple, 20th and 21st of March,) are also received.—The original *Students* justly expostulates against the assumption of the same signature, by another. In his former communication, for "*commonly relates*," read "*can only relate*." He and Mr. H. must give us pause awhile, and we shall probably adopt a rule respecting the right of reply.

No *Laws for a Society* can be inserted.

The answer, from Blackburn, to a question, is probably right, but inadmissible. We trust the proposer sent a case, with a fee, to a conveyancer, when he sent his query to us, for the recreation of students. On this subject we must declare, that no questions proposed will be answered by us, or our immediate friends, in the *LAW JOURNAL*, and that there may be some on which we shall, in duty to the Profession, withhold any answer that may be given. It is not easy to describe those which may be answered; our correspondents will be enabled to distinguish, with a little reflection, and must trust to us for the exercise of our *Veto*, with discretion.

N. B. The pages of this Number being in three different series, for the convenience of binding, the extent of each is marked on the wrapper, at each principal head, that subscribers may see when the number is complete.

ACCOUNT AND ANALYSIS  
OF  
NEW LAW BOOKS,

WITH OCCASIONAL REMARKS.

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ARTICLE II.—*A Compendious LAW DICTIONARY, containing both an Explanation of the Terms, and the Law itself; intended for the Use of the Country Gentleman, the Merchant, and the Professional Man.* By THOMAS POTTS, Gent. formerly of Skinners'-hall. 12mo. Royal, 620 pp.—Ostell, Ave Maria-lane. 1803.

THE preface, as well as the title to this work, boasts much of the utility of a compendious Law Dictionary; and the author, in a *brief* address to LORD ELLENBOROUGH, says, “I have presumed to dedicate this trifling work to your lordship,\* as most competent to judge of its public utility. The design of *reducing the Law Dictionary* into one small volume will, I trust, merit the approbation of every professional man; and should it be honoured with your lordship’s patronage, obtain that share of public favour which would ever constitute the pride and ambition of,” &c. That his lordship is a competent judge there can be no doubt, and as little that his patronage would be the author’s pride; but we cannot help thinking there is somewhat of adventurous boldness in thus challenging the approbation of a Lord Chief Justice to *the Law Dictionary, reduced into one small volume*, which, “as the author has selected his work from other writers, of the most acknowledged authority, and has devoted it to the use of the country gentleman, the merchant, and the professional man, he trusts will not be found unworthy of a place either in the library, the counting-house, or the office.” There is a good old maxim, *de minimis non curat lex*; and as perhaps even the author is not

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\* We presume without authority.

sanguine enough to hope that the Chief Justice can learn much from it, there is some fear that a great Law Lord may have so much to do, that he may chance to overlook the merit of this compendium.

To speak of the work seriously and candidly, we have our doubts, whether so compendious a dictionary of law can be useful to any professional man, unless it be as a glossary, for the explanation of antiquated or abstruse terms, to those who are mere novices in the study. We cannot even agree with the author, that "the authorities *recited* in support of the authenticity of the respective articles *are* referred to, (*with sufficient accuracy*) to serve as a *most* complete index ; whereby *the professional man* may be enabled immediately to direct his attention to any point under consideration." This would be true of any copious and well executed Dictionary, or Digest, or Abridgment, and this in fact constitutes a great part, but by no means the whole of the merit of Comyns's Digest, Bacon's Abridgment, and Tomlins's edition of Jacob's Law Dictionary, by which latter work, we very much suspect, that the author has been assisted "in his design of reducing *the Law Dictionary* into *one* small volume." We are, however, by no means desirous of speaking lightly of the well intended labours of any one, and are readily inclined to believe, that if Mr. Potts, in his present attempt, is really less useful to his brethren of the profession than he intended to be, he is not so from the want of industry and ability ; but from a *radical* defect in his plan ; and because it is absolutely impossible to compress, into one pocket volume, any general view of the English law, without omitting so many material qualifications of general principles, as to afford great room for misconception and error.

We always wish to enable our readers to form a fair judgment for themselves, and as we cannot give an *analysis* of a dictionary, otherwise than by saying, that it is digested in the order of the four and twenty letters of the alphabet, we shall extract a short article or two as a specimen of the execution of the rest.

" *INTEREST of money*, is the premium paid for the use of a sum, and is by law, in this country, limited to 5 per cent. per ann. The laws relative to interest are extremely strict, and many different opinions have been formed on the subject. Thus the sum of 1000l. borrowed for 12 months, on good security, may be well enough paid for with 50l. and it may be difficult in general to employ it, so as to be able to reap advantage by paying more ; but the sum of 20l. borrowed for one month, can never be adequately paid for by 1s. 8d.

"The law as it now stands, forbids, *under an heavy penalty*, a greater sum to be paid; and the person who would take 3s. 4d. for the loan of 20l. for the period last mentioned, would incur that penalty as indisputably as if he had committed an extortion to a great amount. The nature of things, however, which is paramount to the regulations of men, has so ordered it, that a loan of a small sum, for a short time, may be as imperiously wanted as a large one, and it may be, proportionally considered, employed to much greater advantage. The law in this case then prohibits a transaction which would be beneficial to both parties, and which, in its nature, is just as fair as any of the large transactions which it does allow of.

"Where an estate is devised for payment of debts, Chancery will not allow interest for book debts. Ch. Rep. 34. In case of a vested legacy, due immediately, and charged on land or money in the funds, which yield an immediate profit, interest shall be payable thereon from the testator's death: but if charged only on the personal estates, which cannot be immediately got in, it shall carry interest only from the end of the year after the death of the testator. 2 Perc Wms. 26, 27. Where lands are charged with payment of a sum in gross, they are also chargeable in equity with payment of interest for such sum. Fin. Rep. 286.

"INTEREST, COMPOUND, or Interest upon Interest, is as the latter designation expresses, when the interest instead of being paid is added to the capital sum, and becomes an increased capital. This is not allowed by law, though it can be practised without infringing any statute, by renewing the bond, or instrument, and comprising the whole in it, or lending the interest separately."

On this we shall observe, that the penalty, which is the vacating of the whole contract, infected by usury, and the consequent loss of the sum lent, together with a forfeiture of treble the sum, to be sued for by a penal action, ought to have been specified; or an ignorant foreigner, who, perhaps, may be one of Mr. Pott's readers, might possibly fall into the mistake of supposing, that the heavy penalty of the law, which, is as certainly incurred by the loan of 1000l. on usurious interest, as by the petty usury of a low peddling Israelite, who takes 50 per cent. on 20l. or 20s. is equal in both cases. The propriety of laws against usury, so peremptorily denied in the *compendious Law Dictionary*, we have not room or leisure to discuss. It is a great question of political economy, and is intimately connected with the existence of the funding system, which would be greatly embarrassed, did not the government, by means of laws against usury, restrain the competition between loans upon private and public security. We should not therefore too hastily decide upon a subject of such importance.

The following extract will convey a more favourable

opinion of the author's mode of stating the general result of the law upon a common and useful subject, though it will not afford complete satisfaction to those who want to know much about the matter, or who are accustomed to dip below the surface of things.

"MORTGAGE signifies a pawn of land, or tenement, or any thing immovable, laid or bound for money borrowed, to be the creditor's for ever, if the money be not paid at the day agreed upon; and the creditor holding land and tenement upon this bargain, is called tenant in mortgage. He who pledgeth this pawn or gage, is called the *mortgagor*, and he who taketh it the *mortgagee*.

"The last and best improvement of mortgage seems to be that in the mortgage deed for a term of years, or in the assignment thereof, the mortgagor should covenant for himself and his heirs, that if default be made in the payment of the money at the day, that then his heirs will, at the costs of the mortgagee and his heirs, convey the freehold and inheritance of the mortgaged lands to the mortgagee and his heirs, or to such person or persons (to prevent merger of the term) as he or they shall direct and appoint; for the reversion, after a term of fifty or a hundred years, being little worth, and yet the mortgagee, for want thereof, continuing but a termor, and subject to forfeiture, &c. and not capable of the privileges of a freeholder; therefore, when a mortgagor cannot redeem the land, it is but reasonable the mortgagee should have the whole interest and inheritance of it, to dispose of it as absolute owner. 3 *Bac. Abr.* 633.

"Although after breach of the condition an absolute fee simple is vested, at common law, in the mortgagee, yet a right of redemption being still inherent in the land, till the equity of redemption is foreclosed, the same right shall descend to and is invested in such persons as have a right to the land, in case there had been no mortgage or incumbrance whatsoever; and, as an equitable performance as effectually defeats the interests of the mortgagee as the legal performance doth at common law, the condition still hanging over the estate, till the equity is totally foreclosed; on this foundation it hath been held, that a person who comes in under a voluntary conveyance, may redeem a mortgage; and though such right of redemption be inherent in the land, yet the party claiming the benefit of it must not only set forth such right, but also shew that he is the person entitled to it. *Hard.* 465.

"But if a mortgage be forfeited, and thereby the estate absolutely vested in the mortgagee at the common law, yet a court of equity will consider the real value of the tenements compared with the sum borrowed. And if the estate be of greater value than the sum lent thereon, they will allow the mortgagor, at any reasonable time, to recall or redeem the estate, by paying to the mortgagee his principal, interest, and costs. This reasonable advantage allowed to the mortgagors is called the equity of redemption. 2 *Black.* 159.

"It is a rule established in equity, analogous to the statute of limitations, that after twenty years possession of the mortgagee, he shall not be disturbed unless there be extraordinary circumstances; as in the case of a feme covert, infants, and the like." 3 Atk. 313.

We have, in a former volume, reviewed a Commercial Dictionary, by Mr. MONTEFIORI, in which we were surprized to see the word ABANDONMENT omitted in the alphabetical order; perhaps the small size of the present volume affords some excuse for the like omission, particularly as the term is explained under the article *Insurance*. This together with the articles *Excise* and *Executors*, may be referred to as the most favourable specimens of the work, and we should notice them more particularly, did not our limits prevent us from making longer extracts.

In the article *Evidence* there is an error in the name of a judge, namely, in calling Lord Chief Justice TREBY, Lord Chief Justice TULLY, which we notice, because it has evidently crept in from adopting a newspaper report, in which we observed the same mistake. We also take this opportunity of remarking, that the doctrine there laid down, namely, that a witness shall not be cross-examined to degrade his own character, has not, *we believe*, been very strictly, if at all, acted upon, since the case alluded to; although it was thought proper, by the parties, to drop the proceedings in the demurrer to evidence, on that occasion, principally through inability to defray the expence of proceedings in error.

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ARTICLE III.—*The PRACTICE of the Commissioners, Assessors, Surveyors, Collectors, and other Officers, under the Authority of the several Acts relating to the ASSESSED TAXES; including a correct analytical Abridgment of the several Statutes passed in the 43d Year of the Reign of his present Majesty King Geo. III. relative to the Duties under the Management of the Commissioners for the Affairs of Taxes; with Tables of the Duties, adjudged Cases, explanatory Notes, and original Precedents. The whole digested and arranged in the methodical Order and Course in which the Acts are to be carried into Execution. By T. W. WILLIAMS. Esq. of the Inner Temple, London, Barrister at Law, Author of the whole Law relative to the Duty and Office of a Justice of the Peace.*—W. Clarke and Sons, Portugal-street, Lincoln's Inn. Octavo, 112 pp. 1804.

WE notice the publication of this work early, because, as it is practical in its nature, and applies to the business which is now carrying on before the commissioners, it

may be useful to some of our readers to know that such an abstract is to be had, and it may be of much less importance to mention it hereafter. The title, which is not one of the shortest, or, in other words, is what booksellers and printers call a *good bold* title page, is fully sufficient to *advertise* the reader of what the work is intended to be; and those who know *Mr. Williams's practice* in *compilations* of this kind, will, perhaps, give him full credit for having made a pretty fair and copious selection of whatever is extant in other books upon the subject. In a great measure, this must be principally confined to the statutes at large, with which he is very well acquainted. The cases upon the subject are not such as have been decided, upon the acts immediately in question; for, being very recent statutes, none have to our knowledge occurred, but there are some, upon similar clauses, in similar acts, these acts themselves being a sort of compilation from others; which are selected with sufficient accuracy and care. Of the *correct analytical abridgment of the several statutes, &c. &c.* we need only say, that it is as faithful as need be, and fully adequate to all the purposes for which *any abridgment* of an act of parliament can be used. By which we mean to say, that such abridgments, those in the *LAW JOURNAL* not excepted, if made with competent skill and attention, may be of great utility upon ordinary occasions, and, in most hands, may be of use to facilitate the general understanding and interpretation of the clauses; so that few, indeed, who act under them fairly, will be misled. But that, wherever *nice* verbal criticism is to be exercised upon the construction of any clause, it is obvious that the act itself must be referred to, in the statutes at large. We throw out this, not by way of detracting from the merit of *Mr. Williams's Abridgment*, but that we may give some of our least experienced readers a true understanding of the *real* use of such things in general, and we are sure they will not accuse us of being deficient in candour when we make an acknowledgment, in which we evidently do not seek to overrate the value of our own labours. With respect to the work before us, the addition of precedents and forms of conviction, together with a good methodical arrangement and a copious index, if they do not render it, in *all* cases, a complete *succedaneum* for the acts, so as to supersede entirely the necessity of referring to them, make it at least a very useful companion or appendix to them.

We shall conclude our notice of this work by adding, that it is arranged under the following heads: viz.

I. Tables of the duties.—II. What persons shall be com-



missions for managing the assessed taxes, and herein of the general authority.—III. The first meeting of the commissioners, to appoint the respective subdivisions, and issue precepts for the appearance of assessors.—IV. The second meeting, to appoint assessors, and deliver the charge.—V. The manner of making the assessments; and herein of the authority of the surveyors and inspectors.—VI. The third meeting, to sign the assessment and warrant to collect.—VII. The fourth meeting, and herein of the hearing and determining of appeals.—VIII. How the rates shall be collected, and by the collectors paid over to the receiver-general.—IX. Receiver-general to pay the money into the exchequer.—X. Transmitting duplicates of the assessment into the exchequer.—XI. Indemnity of officers doing their duty, and herein of their punishment for misbehaviour.—XII. Recovery of the penalties.

# ANCIENT READINGS,

## ON THE

### LAWS OF ENGLAND.

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THE ancient readings on the common and statute laws of England, delivered in the different Inns of Court, have frequently received the sanction and approbation of the greatest lawyers, being even quoted as authority by *Littleton* himself. The practice was one of very great antiquity, but has been long since discontinued, the form and title of the office, only, being at this day preserved. The disuse of this custom is lamented by *Lord Coke*, as prejudicial to the proper study of the law, for, in his commentary upon the 481st section of *Littleton*, he says,

“ Here, it is to be observed, of what authority ancient Lectures, or readings upon the statutes were, for they had five excellent qualities. First, they declared what the common law was before the making of the statute. Secondly, they opened the true sense and meaning of the statute. Thirdly, their cases were brief, having, at the most, one point upon the common law, and another upon the statute. Fourthly, plain and perspicuous; for, then, the honour of the reader was to excel others in authorities, arguments, and reasons, for proof of his opinion, and confutation of the objections against it. And fifthly, they read to suppress subtle inventions to creep out of the statute. But now readings have lost the said former qualities, have lost also their former authorities; for now the cases are long, obscure, and intricate, full of new conceits, like rather to riddles than lectures, which, when they are opened, vanish away like smoke, and the readers are like to lapwings, who seem to be nearest their nest, when they are farthest from them, and all their study is to find nice evasions out of the statute.”

Many curious and amusing particulars concerning READERS, are to be found in *Dugdale's Origines Juridicales*, which as they are little known at the present day, we should have extracted from his account of the Middle Temple, but want of room at present prevents us.

"After enumerating (*vide* p. 203) the different degrees in the Inns of Court, of student, barrister, cupboard man, and benchers, he says,

"The next degree to a benchers is that of **READER**, which at the farthest falls out to be within two years after the party's first admittance to the cupboard. The two readers are chosen by the bench, at their assembly in parliament, yearly, upon the Friday before the feast of All Saints, being generally the two ancient cupboard men, yet the bench is not tied to any such necessity of choice, for if upon due consideration of the estate, learning, quality, and carriage of the person, he be not thought worthy of so great a calling, the bench hath power to put him by, and elect another in his room, for before he is declared reader, he is only in the state of a probationer."

"The two parties nominated aforessid as *readers*, are the next day at dinner, called to the bench table where from thence forward, they take their commons, and are to bestow upon the rest of the benchers, and ancient barristers, a certain proportion of wine for their first welcome. By reason of the excessive charge of readings many men of great learning, and competent practice, as well as others of less learning but great estate, have refused to read, and are thereupon removed to the ancients' table."

He then describes the ceremonies with which, at the next feast-day of All Saints, the new reader enters upon his office. This is indeed a scene of splendid feasting, and hospitality. The judges, the benchers, barristers, students, and visitors, are regaled with venison, with wafers, with cups of wine, and bowls of *Ipocras*. The gentlemen at the bar dance a measure after the master of the revels; and one of them, while he is walking or dancing with the rest, upon being asked to give the judges a song, begins the first verse of a psalm, in which he is followed by all the company. And that this was no small charge to the reader, will appear from an order of the bench made in the reign of Philip and Mary, by which he was, in the summer course, "enjoyed to spend fifteen bucks in the hall, during his time of reading;" but shortly after "to avoid all occasion of superfluous expence," by another order in the same reign, he was not to *exceed* those fifteen bucks. But says Dugdale, "the times are altered, there being few summer readers, who, in half the time that heretofore a reading was wont to continue, spend so little as three score bucks, besides red deer; some have spent four score, some a hundred." In the last week of the reading, there was also a costly feast provided, for the foreign ambassadors, earls, lords, and men

of eminent quality, which, though called the Reader's Feast, was at the expence of the house.

"A reader also took place not only within his society but elsewhere, of all such as had not been readers, and he *was wont* to be heard in the King's Bench, and other courts of justice before others."

We shall not venture to make any comment upon the disuse of the custom, but must add, that these readings are not only curious from their antiquity, but some of them at least undoubtedly form a most valuable commentary upon the old statutes, and the publication of them has been often recommended, but for very obvious reasons, performed to a partial extent only. The expence and labour attending such an attempt are indeed sufficient to deter the most indefatigable antiquarian from hazarding it; but these reasons do not apply in all their force to the *LAW JOURNAL*, and having a few pages of our Number, which we devote to the publication of papers, likely to prove interesting to the profession, we think we cannot occupy them better than by occasionally giving such of these valuable remains as have never been published, together with curious legal Biography, which we commenced in the last Number.

We now present the introductory lecture of Mr. Serjeant ASHLEY to his readings, on the liberty of the subject, delivered at a very critical period of our history, and when this topic excited general attention.

*READINGS on the Statute of MAGNA CHARTA,  
and other Statutes, relating to the Liberty  
of the Subject.*

*By FRANCIS ASHLEY, Esq. \* afterwards Sir FRANCIS ASHLEY, Knight, and one of the two elder Serjeants at Law, Anno 1625, 1st King Charles I.*

(From an Original unpublished MS.)

"I AM not ignorant how improper a personall discourse is to a public auditory, but if tolerable at any tyme, it may

\* Mr. Ashley was autumn reader in the Middle Temple in the 14th year of king James, A. D. 1616. He was made serjeant at law by patent, dated 15 February, 15th of James, A. D. 1617, and in the first year of king Charles, 30th April, A. D. 1625, was made one of the two elder serjeants at law,—and afterwards received the honour of knighthood.—In the year 1628, he was counsel

best receive a dispensation at those tymes when by a commendable custome, men are to render a reason of these undertakings.

"Wherein I must needs declayne the comon apologie of distraction in resolution, and struggling with difficultyes that commonly dissuade, and sometymes wholly divert these enterprizes: for since I first entered into this profession, and when I had once put my hand to this plough, I resolved not to looke back, and have therefore alwayes steered on with a foreright course, *per saxa, per undas*: yet after long tra-vaile, am but now entered the streights, and no sooner entered, but am presently fallen on the point which may well be called *perilous*, for it cannot be denied to be a perilous point indeed, when a man must inevitably run the hazard of wreck of no worse commodity than his reputation, upon the rock of censure, be it either just or unjust, for if the censure of my actions be just according to their defects, or if my intentions be unjust according to their sincerity, either of these are sufficient to dip me in that depth of ruine, which I doe soe fearfully shun.

"I am not ashamed to say fearfully, sithence the most learned of physitians doe acknowledge that strong and sound bodies may be sometymes affected with the disease which they call *tremor cordis*, a trepidation of the heart, which though not mortall, yet works a strange perturbation of the spirites for a tyme. Noe marvail then if I have a strong touch of this disease, to whom, out of long experience and much observation, it is right well knownen, *that as often as a man speaks, soe often is he judged*: a man's words and writings being but the pourtraitures and pictures of his mind, and his actions but an index to his intentions, but especially doe a man's publique actions *indicare verum*. When then a man is to be heard, and being heard, must be judged,

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with the Attorney-General, and followed him in a speech before the committee of both Houses, in answer to the argument that was made by the House of Commons, touching the liberty of the person of every free man, for which he was on the next day called to the bar of the Upper House, and committed to custody for his liberal speech, without special commission from the House, the lord president stating, "that though, at this free conference, liberty was given by the lords, to the king's counsel, to speak what they thought fit for his Majesty's service, yet Mr. Serjeant Ashley, had no authority nor direction from them to speak in the manner he had done."—The words which occasioned this committal were, that "the propositions made by the Commons tended rather to anarchy than monarchy. and that they must allow the king to govern by acts of state." The serjeant was soon afterwards released upon recanting and making an apology—

and not only so, but judged for his faults too, with what affection then a man shall come to such a judgment, when he knowes he may be worthily both judged and condemn'd; let those judge that are to be judged.

"In all high attempts, every man knowes resolution is a principal virtue not to be spared, but it is as well known that if the resolute man sees not, or knowes not, how his resolution will be seconded, they either quayle before the attempt, or are foyled in the action.

"Which considerations are more than enough to daunt my determinations, because my secondes fayle me.—The best secondes for an expedition of this kind are natural habilities and accidental aydes. The habilities of nature I reckon those have, (and many have them), who can say with Ovid, *Quicquid conabar dicere, versus erat*.—So surely many men have just apprehension, and apt disposition by nature to those exercises, that whatsoever points questionable fall within the compass of their apprehension, they can with great dexteritie mould them into the form of a reader's case, from which, on the contrary, I have been naturally so averse, that some which know me do know this defect in me, that I had rather argue many, than compose one.

The accidental aydes are those which the same author mentions to be requisite in the compiling of his metres, *carmina secessum scribentis et otia quarunt*.—If his verse, much rather doe these compositions require *secessum et otium*: but retiredness and leisure have both been denyed me (*hiatus in MS*) \*\*\*\*\* chiefly with private distractions I may say \*\*\*\*\* *me mare, me venti, me fera jactat Hyems*.

Therefore you must not, and all I hope is, you will not expect from me any thing exact, any thing curious.

But I do not thus apologize perfunctorily, or as those which sometimes disable themselves with hope to win the great opinion, when they shall produce any thing praiseworthy, because it comes beyond expectation, for had I all the habilities of nature, ornament, of art, and advantages that study and industry could add unto me, I should need offer sacrifice to *St. Opinion*, the great goddess of foolles, yea, and of many also reputed wise, who cannot yet content themselves with the real parts of their endowments, but think that *Scire tuum nihil est nisi, hoc sciat alter*, and will needes also tender an oblation at the shrine of this saint.

From which any man may discharge me, who sees what choice I have made of the theme, to be the subject of my labours, whereby it is impossible I should gain any opinion, unless it be an opinion of foolhardiness, that will thus ex-

pose myself to peril, and put forth to sea in so dangerous a bottome, when the billows work high, and the superior bodies threaten stormes, and I wot well that *procul a Jove, procul a fulmine.*

“ But *jacta est alea.* It is now too late for me to run retrogade, and I will not doubt but the same power which first directed my perplexed cogitations to pitch and settle upon this subject, without purpose of offence, will also guide me to proceed therein to an offenceless conclusion.

“ The statute\* you may perceive, proclaimes liberty to the subject; but it must not be conceived to be a lawless liberty, whereby men may live like libertines, but a liberty bounded by the equities of law and reason; and yet such a liberty as whereby the subject may well say he was delivered from a great thralldome, and tyrannical oppression.

“ For when duke *William* had by his Norman sword purchased an English monarchie, he soon after gave our countrymen to understand, that his sword was his best title to his kingdome, although he came first as a pretender; for shortly after he seized upon the best English possessions, resumed their liberties, imposed tallages at pleasure, endeavoured to abrogate their lawes and abolish their ancient customs; and such as withstood the articles he exhibited for change of lawes, and innovation of government, them he exiled by his power, without forme of lawe, labouring by all means to make himself absolute.

“ And after his time, also, by reason of the continual revolts in Normandy and Aquitaine, and several home attempts and domestic broyls, the government in this kingdome was rather arbitrary than legall, until the tyme of *Henry* the 3d.

“ At which tyme, the state being better settled, and the tymes more peaceable, the barons and commons then became more sensible of the loss of the benefit of those ancient laws, of which the power of a conqueror had deprived them, and therefore (making happily some advantage of the tenderness of the king's yeares), by parliament, in the 9th of *Henry* 3d, obtained restitution of those lawes, which had susteyned so long a suspension; which statutes are stiled the king's great charter, and the charter of the forest, though enacted by parliament, because they could not passe but by his royal assent. And it was not amiss that *denomi-*

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\* Magna Charta.

*natio* should be a *prestantiori*, the subjectes not regarding *quo nomine* their liberty came, so they might enjoy it.

“ It is not worth the dispute, whether it be a statute *de novo*, or be but a declaration of the ancient common law, but I am of opinion with the *Doctor and Student* (fol. 12, a), who sayth that it is an old custome of the realme, and that it was now but confirmed, which I doe the rather beleieve, for that it conteynes the some and the substance of all those lawes which were in use in the tyme of that king *Edward* who had the addition of *Holy*, and were so much respected, that at all tymes since the restoration of those ancient laws, published by the statute of *magna charta*, the kings of this realme are, amongst other particulars of their oaths, taken at their coronation, sworne to observe and mainteyne the laws of *St. Edward*.

“ Yet it lets not, but that these lawes, having new life put into them by parliament, after so long disusage, may well be called and accounted statutes, for so doth the same *Doctor and Student* say, that this ancient custome was confirmed by this statute, and the statute, 5th *Edward* 3, c. 3, which refers unto it, terms it a statute; and it is most usuall at this day, in an action brought upon this law, to conclude *contra formam statuti*, which I mention to this purpose, that a man that employs his travayles to the exposition of this law, may as well be sayd to reade on a statute, as he that reades on the statute of the 25th of *Edward* 3d, of treasons, and many others which I could instance, which are agreed to be but declarations of the common law, yet have often been taken up as statutes, by those which have taken up the place wherein I now sit. But if it be the common law, it is the law of lawes, for as the Lord *Coke* sayth, in his preface to his 8th report, the old statutes, which were the ancient common lawes, are the body and the text, and all records and reports are but commentaries and expositions upon them; and so is this law in effect the ground, and the subsequent, but flourishes upon it; this the base, and others the descant.

“ But if it be a meer statute, it is the statute of statutes, for it hath begotten many of the like kind, as 2d *Edward* 3d, c. 8; and 2d *Richard* 2d, c. 10. No commandment under the great or privy seale shall delay justice.

“ The 5th *Edward* 3d, c. 9, refers to this in expresse termes, saying, that no man shall be attached or forejudged of life, limb, lands, or goods, contrary to the statute of *magna charta*.

“ The 28th *Edward* 3d, c. 3. No man shall be disseised of his land, imprisoned, or condemnyd, without answer.



“ And by the statute, 5th *Edward 3d*, c. 4. none shall be put to answere upon suggestion, without indictment or presentment.

“ Unto which the 42d *Edward 3d*, c. 3, adds, without indictment, presentment, or matter of record.

“ And the Lord *Coke* sayth, in his 3d report, it hath been confirmed thirty tymes, and thirty tymes thirty more I suppose it would, if it lay in the power of the subject to give any strength unto it.

“ And no marvayle, if wee consider eyther the worth or the extent of it; for it is as much worth as our lyves or estates are worth, and the extent is as large as any thing we have which we hold precious.

“ For, if we love our liberty, *nullus capietur vel imprisonetur*: if we would enjoy our lands without unjust disturbance, *nullus disseisietur de libero tenemento suo*: if we regard freedom's franchise, royaltys, and priviledges, *nullus disseisietur de libertatibus*: if we esteeme our ancient free customes, by which we have gained tytle in our lands, property in our goods, or interest in our priviledges, *nullus disseisietur de liberis consuetudinibus*: if we would enjoy the benefit of the laws in general, *nullus utlagetur*: or if we rejoyce in the ayre of our own country, *nullus exuletur*: or if we would be delivered from any kind of oppression, *nullus aliquo modo destruetur*: nay, if our lyves themselves be dear unto us, and that we would be protected against the mischiefes of power and art, *nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum vel per legem terræ*.

“ In brieft, by virtue of this statute, we have property in our goods, tytle to our lands, libertye for our persons, and safety for our lives. By 1st & 2d *Philip and Mary*, (*Dyer*, fo. 104. p. 11.) *en le case entre Anderson et Ware*, it is further added, and that justly, that by force of this statute, every free subject may have remedy for every wrong done to his person, lands, or goods: and not only so, for that would but give a recompence for a wrong done; but this statute also prevents wrongs; for by vertue thereof, no man shall be punished before he be condemnyd, and no man shall be condemned before he be heard, and none shall be heard but his just defence shall be allowed.

And yet more breifly, yet hereby freemen differ from bondmen, and subjects from slaves. But it is a subject on which an orator might enlarge his amplification at pleasure, which I must forbear, having only so much oratorie left as to let you know that I am no orator; for *oratoris est*

*docere, delectare, et promovere*, and I am unable to teach, unapt to delight, and unwilling to stir the affections, because I know I cannot *movere*, unless *ad risum*; nor stir up any affection but that which I most shun.

And will therefore forbear to add more in commendation of this law, (of which much more might be said) lest in pursuing it too far, I might be conceived to be like that philosopher, who would extol philosophie unto the skyes, that himself might also mount up on her wings.

But *qui vadit plane, vadit sane*; wherefore I will proceed *more solito*, and acquaint you with the several parts into which I have distributed this text."

[To be continued.]

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## COMMUNICATIONS.

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### X. On the Statute of Uses, applying to Uses created by Wills.

I AM decidedly of opinion with your Wolverhampton Correspondent, that uses, created by wills, are executed by the statute, but I differ from him in some points, and must acknowledge that the arguments of *Studens* remain, in part, unanswered.

The first argument in opposition to the doctrine, that the statute does apply, is very correctly stated by Mr. Higgs, viz. "that as the preamble of the statute does not complain of any hereditaments having been fraudulently transferred by *wills*, but only by *assurances*, it was not the intention of the statute to touch *uses* on legal estates, created by *will*, but only uses created by *assurances*;" but the answer does not appear to me to be by any means satisfactory. "As the enacting part of the statute," it is asserted "certainly mentions *wills*, the weight of this argument must rest on the restriction which the preamble may have on the enacting part of the statute;" and here some cases are adduced to shew that the preamble, in this case, can have no such restrictive power. Now I cannot agree with Mr.

Higgs that the words of the statute apply to wills which derive their being from the statute 32 Hen. 8. BY NAME as suggested by him, for the wills adverted to by the statute of uses, were merely testamentary declarations of uses which were previously in existence, and not those testamentary dispositions of real estates which derived their efficacy from the statute 32 Hen. 8. which created wills. The statute of uses could not apply by name to those wills, for at the time of passing that act, no such wills were in existence, nor even in the contemplation of the legislature. It is, therefore, perfectly clear, that the statute of uses does not apply to wills by name. My answer is, that there are sweeping words in the act—words of such comprehensive import, as to include all uses, by what mode soever they were then or might hereafter be created; the words I allude to are “hereafter,” and “or otherwise by any manner of means whatsoever.” Now if those words are of such comprehensive import as I contend they are, it is perfectly clear that Studens’s first argument cannot be supported since the preamble cannot restrain the enacting part of an act. But, says Studens, the words “hereafter, are not words of prospective import,” by which I understand, he means, these are not words which can apply to uses created by any mode devised subsequently to the statute of uses; “they are words which apply only to the modes of declaring the use.” Now I must admit, that those words might have been applied to other modes of declaring the use, besides wills; if any such modes existed, but I am not aware that there were any such at the time of passing the act. They might also have been applied to the other modes of creating uses, than those enumerated, which were in existence at the time of passing the act; but might they not have been applied, as well to such modes as should be devised subsequently to that period? Then why give them that narrow construction? Why open the door to that inconvenience, which would infallibly happen by clothing uses, created by different modes, with different properties, when by giving them their plain, obvious, and general construction and meaning, you would avoid that objection? I have endeavoured to shew, that uses created by wills, under the statute 32 Hen. 8. come within the letter of the statute of uses, but if I have not succeeded in establishing this position, I am confident, I stand with such firmness on other grounds, that all the ingenuity of Studens cannot remove me from them. The spirit with which laws are made, and the objects legislatures have in view, not the letter of the law, are the rule for the construction of laws. Let us then see with what

spirit the statute of uses was enacted, and what objects parliament had in view in passing it? Many inconveniences were found to exist in keeping the use of the estate distinct from the possession. To remedy those inconveniences by converting *all* uses, into the legal estate, was evidently the intention of our legislators; How then, would I ask, is that intention to be carried into effect? How are the inconveniences of keeping the use distinct from the possession to be obviated in every case; unless uses created by a mode devised subsequently to the passing of the act, are to be transferred into possession? If in passing laws, legislators, *evidently meaning to annihilate uses altogether*, enumerate certain modes by which those uses may be created, and, omitting others, expressly abolish the uses created by the modes so enumerated, and are silent with respect to the others; yet, I contend, that all the uses, as well those created by the modes enumerated, as the others, are destroyed, because it was the intention that they should be so.

M. G.

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XI. *On the same Subject, by Studens, in answer to Mr. Higgs.*

IT is not disputed by me, that the preamble of a statute will not restrain the enacting part; all that I contend for is, that you must look at the preamble, to *explain* the enacting part, where the latter does not of itself shew, with sufficient clearness, to what cases the legislature meant the statute to extend.—Then, is it to be believed, that those by whom the statute of uses was enacted, (chiefly to prevent an indirect devise of the land by devising the use), had, at that time, in their contemplation the future statute of wills?—If there is any doubt, look at the preamble, and that proves, that no other seisin could have been intended by the legislature, (as I argued in my last), than such as might have been derived from some ASSURANCE, which a *will* is not.—Mr. Higgs will not look my arguments in the face; for, instead of contending that the intention of the legislature was that the statute of uses should extend to seisins under the statute of wills; a statute, which was not in existence, nor thought of at the time; he assumes that, and then maintains that the enacting part of a statute may extend it beyond the preamble.

*With respect to the word 'will'* as used in the statute of uses, Mr. Higgs has not met the argument, 'that the word is appropriated to the declaration of the use; but still the gentleman's mind appears to cling with some fondness to the absurd notion, that because the statute contains the

word 'will,' it must necessarily be understood to speak of and include those wills which had no being until some years after; that is to say, that wills under the statute of wills, were in force some years before the statute was passed.

With respect to the future words, '*or shall hereafter* ;'

I did not say that the statute does not contain any words of prospective import, *merely* (as it would appear from the extract given by Mr. Higgs,) but, I added, *which could affect a seisin, under the subsequent statute of wills*; and, I again repeat, that the word *hereafter*, as used in the statute of uses, can only relate to a seisin, which might have been created, under some assurance, by virtue whereof persons might *then* stand or be seized.

Mr. Higgs asserts, that the truth of that side of the question which he has contended for was solemnly recognized in the case of *Somerville v. Lethbridge*, viz. that it was decided by that case, that where there is a devise to one or more to the use of another such use will be executed by the statute of uses. I admit that the question between Mr. Higgs and myself was at issue in and decided by that case: it has certainly put the dispute to rest for ever. But, what was the decision in that case? I affirm that it was the very reverse of what Mr. Higgs has asserted. The reader has only to look at the certificate of the Judges in 6 Term Rep. 216. to be convinced of the truth of my assertion. I will, however, briefly state the case referred to.

As far as the present question is affected, the case was as follows:—A testator devised lands to Hugh Somerville and H. F. Luttrell, in fee, *in trust to and for the use of* John Southey Somerville, for 99 years. The chancellor directed a case to be stated for the opinion of the court of King's Bench, upon the following question—What estate John Southey Somerville took, under the will? The certificate returned by the court of K. B. was, "that Hugh Somerville and H. F. Luttrell, (the devisees to uses) took a fee-simple in the freehold, &c.; and that *none* of the subsequent limitations, (of which number was the limitation of the use to John Southey Somerville) were limitations of uses executed by the statute.—The Judges then went on to say, that "if the subsequent limitations of uses, had been limitations of uses, executed by the statute, they were of opinion, that John Southey Somerville would have taken an estate for a term of 99 years, &c."\* This case, therefore, is decidedly in favour of the position which I have been all along contending for.

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\* In that case no argument is reported, to shew how the immediate point here, in dispute was considered by the court.

It only remains for me, in reply to Mr. Higgs, to notice the other points as to the validity of a devise to the use between the statute of uses, 27th *Henry VIII.* and that of wills, 32d of the same reign. This point, according to Mr. Higgs, only admits of arguments founded on probabilities, and he still thinks the opinion of Messrs. Hargrave, Butler, Powell, and others, on this subject, to be just. I have, however, the satisfaction of being able to present Mr. Higgs with an argument, founded upon *certainty* and fact, and which at the same time, cannot fail to disprove the opinion of the eminent characters just mentioned. In a case *between* the statutes of uses and of wills, viz. in the 30th of *Henry VIII.* it became a question, In what cases a use might be changed? And it was held, that if a man *declared his use by will*, as "I will that my feoffees shall be seized to such a use;" there he may change the use because created by will. So that the validity of a devise of the uses, *between* the statute of uses, and devises, is made manifest by this case. See the case itself, *Bro. Feoff. Al. Uses*, pl. 47.

Another correspondent has said, (last Vol. p. 559,) that if the statute of uses does not apply to uses, declared on seisin created by will, it cannot apply to uses declared on a seisin created by virtue of the acts for redeeming the land-tax: but the cases are altogether dissimilar. The reason why the statute of uses does not apply to wills at this day, viz. that no seisin could have been created by a will, at the time of the statute, does not bear upon conveyances under the land-tax acts, because the conveyances by these acts authorized, were in force *at the time of the statute of uses*, and competent to create a sufficient seisin, whereon uses might have been limited. The land-tax acts do not, like the statute of wills, appoint a *new mode* of creating a seisin; they merely authorise persons (as tenants for life, for instance) to convey in fee, who otherwise would not be entitled so to do.

*Lincoln's Inn, March 16, 1704.*

STUDENS.

P. S. I take this opportunity of enquiring, if Mr. L— means to give up his arguments on the subject of powers. In discussing the subject with that gentleman, I should not feel myself called upon to use, nor should I be justified in using a style similar to some of my former communications, because he confined himself to argument. I deemed such a style admissible only in answer to those who themselves endeavour first to hold up others to ridicule.

In a late Number of the Journal some person has assumed the signature which has been subscribed to my communications, see p. 36. If that person has any particular fancy to the name *Students*, I should not have the smallest objection to resign it to him; but, if he has taken the signature of an old correspondent, in the expectation of having his request more readily complied with by the Editors, I do not think such a practice altogether right.\*

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XII. *Copy of Mr. B.'s further Opinion on a Question, Whether the Power of selling and exchanging in Settlements are properly limited to Strangers? †*

I SEE no reason whatever to alter my former opinion, that there is not the slightest ground for Mr. Holliday's opinions.

Sept. 9th, 1796.

B.

Copy of Mr. H's Opinion.

I cannot concur in either of the objections, which have been taken against the title to Sir A.'s estate of Black Acre.

In respect to the objection from Sir A.'s having levied a fine, instead of suffering a recovery to bar the entail, subsisting when he came to the estates, I agree that a recovery would have guarded against the possibility of having his title affected by any debts or incumbrance of his father, upon the reversion in fee, or by any last will or any other conveyance of his father. But the father having died intestate, and no debts or conveyance appearing to interrupt or clog the descent of the reversion to Sir A., I think that the title is good, notwithstanding his having levied a fine, instead of suffering a recovery; indeed I suppose the objection on that account is rather cautionary than one meant to be finally insisted upon.

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\* We trust that it has happened entirely from mistake.

† Vide Law Journal, vol. ii. p. 545.

As to the other objection, which seems to be thought the material one, I think it clear, that the power of sale in Sir A.'s late marriage settlement, is as *effectually* exerciseable as if it had been reserved to Messrs. B. and F.; the releasees to uses, and trustees to prescribe contingent remainders. It would indeed have been more conformable to the common practice, if the power had been intrusted to them. But it is *not essential* to the execution of powers, that the persons exercising them should have any estate or interest in the land. When the power is annexed to an estate, it is on that account called *appendant*; where it is vested in one having no interest in the land, the power is called *collateral*. But both powers are exerciseable with equal effect. The authorities cited by Mr. B. in support of his opinion, strike me as amply sufficient to this doctrine. But further authorities may be cited, and I particularly request attention to the case of a power to executors to sell in *Co. Lit.* 113; and to the opinion of Mr. Booth, in Mr. Hilliard's edition of *Sh. Touch*. Probably Mr. Booth's opinion may have considerable influence in subduing the doubt which has been raised, whether the remainder to trustees to preserve, was estate enough to make the power of sale effectual? This doubt might have been answered by pointing out the sufficiency of the remainder in point of estate. But Mr. Booth saw that the *principle* of the objection was erroneous. He therefore in the most preremptory language denied the principle, forcibly observing, that it is absolutely immaterial to the creation of powers, "whether they are reserved to the parties that created the uses, or to any one having an actual use or estate under any limitation in the deed of uses; or to feoffees, grantees, releasees, or to an absolute stranger."

Nor was he the only one who treated the case in this way, for Mr. Filmer was consulted on the same occasion, and gave it as his opinion unequivocally, that though the power was not *appendant* to any estate but was *collateral*; yet such a collateral power would enable the trustees to convey a good estate in fee-simple. In other words, both Mr. Filmer and Mr. Booth, on the one hand saw that the power of sale to the trustees to preserve was not *appendant* to their estate in remainder, but was as if a remainder had not been limited to them; and yet, on the other hand had not the least doubt of the sufficiency of the power. The opinion of those two eminent conveyancers operates doubly against the objection to the power in question; for if they are right it is not only a mistake to consider *appendancy*



to an estate as necessary, but it is equally a mistake to consider the power of sale usually given to releasees to uses, and trustees to preserve contingent remainders, as an appendant power, it being according to the notions of Mr. *Filmer* and Mr. *Booth*, as collateral, as if given to persons having no estate or interest of any kind.

Upon the whole, I hope, that upon further consideration both of the objections which have been made against the title in question will appear to be fully obviated.

Sept. 10th, 1796.

H.<sup>e</sup>

### XIII. *On the Power of Commissioners, by Bargain and Sale, over Bankrupt's Estate Tail.*

“FOR the reasons I shall mention, I doubt much whether a good title can be made to the lands comprised in the indentures of lease and release, of the 19th and 20th of December, 1753.—By the articles of the 11th June, 1711, recited in the release, a sum of 1000l. was agreed to be laid out in the purchase of lands, situate within five miles of London, to be settled

“ To the use of Mr. *H. H.* for life, remainder;

“ To *E. T.* his intended wife for life, remainder;

“ To the sons of the marriage in tail male, remainder;

“ To the daughters in tail, remainder;

“ To his right heirs.

“ The issue of the marriage was a son called *J.*, and a daughter called *S.*; she married *R. C.*, and had issue by him a son called *W.* *H. H.* died, and his son *J.*, in 1748, became bankrupt. On the 20th July, 1749, he obtained his certificate.

“ The 1000l. had been laid out in the purchase of stock.—On the application of *E.* the widow, part of it was sold, and the money raised by the sale of it was laid out in the purchase of the lands in question, and by the indentures of the 19th and 20th of December, 1753, they were settled

“ To the use of said *E.* for life, remainder;

“ To said *J. H.*, in tail male, remainder;

“ To said *W. C.* in tail, remainder;

“ To the right heirs of said *H. H.*”

*E.* died in her son's life-time. After her decease the commission was renewed, and a new bargain and sale, compriz-

ing the lands in question, was executed by the commissioners to the assignees.

These are the circumstances of the case ; and it appears to me very doubtful, whether the effect of them has been to bar either the entail or the remainders over, created by the articles of the 11th June, and the settlement of 1753.

“ 1st. It may be argued, that as the trust expressly directed the money to be laid out in the purchase of lands within five miles of London, it was a breach of trust to lay it out in the purchase of other lands ; that if it were a breach of trust, the rights of the parties cannot be affected by it ; that it must therefore still be considered as if the money had continued vested in the stock ; that by reason of the remainder over, the bankrupt could not have obtained a decree to have the stock transferred to him ; or a decree that the lands, when purchased, should be limited to him and his heirs during the existence of the issue in tail ; that the assignees are never in a better situation than the bankrupt himself ; that while the trust fund continued stock, the bankrupt could not bar the entail, and that therefore the entail, and remainders over, are still subsisting.

2d. “ But admitting either that the objection to the investment of the money, in the purchase of the lands in question, cannot be supported ; or that if it can be supported, it can be of no consequence, from its being admitted, that the entail is actually barred ; still it appears to me very doubtful, whether the remainders over are barred. Where a tenant in tail, expectant on a previous estate for life, becomes bankrupt, it seems admitted, that as without the concurrence of the tenant for life, he could not have suffered a recovery, and thereby acquired the fee-simple of the lands ; but might without his concurrence have levied a fine, and thereby acquired a base fee, determinable on the failure of the issue in tail. The bargain and sale will therefore operate as a fine, and vest the land in the assignees, for an estate in fee, determinable on failure of issue of the bankrupt, and not for an absolute estate in fee simple. I have seen opinions to this effect by counsel of the first eminence, and I have known them acted upon by gentlemen of the greatest skill and caution.

“ But to support the present title it must be contended, either that in consequence of the tenant in tail surviving the preceding tenant for life, the original bargain and sale had from that time the effect of a recovery ; or that the new bargain and sale, being subsequent to the decease of the tenant for life, had that operation.

“ To each of these positions, objections of weight appear

to me to lie. It may be said, that both the first and second bargain and sale, must be referred for their effect, as to all the property of which the bankrupt was actually seised, at the time of the bankruptcy, to the time when the first bargain and sale was executed, and that by the decease of the tenant for life, the bankrupt does not acquire a new estate, but continue seised of his old estate; so that after it is fallen into possession, it is the very same estate that it was, when it was an estate in remainder; that there was nothing on which the second bargain and sale could operate; that the statute authorizes the commissioners to make a bargain and sale of the lands of which the bankrupt was seised at the time of bankruptcy, or *which he afterwards acquires before the certificate*. That in the present case, the land, by falling into possession, was not a new acquisition, and that when the commissioners had executed the first bargain and sale, they had completely exhausted their power. The consequence may therefore be said to be that the second bargain and sale, as to the lands in question was wholly inoperative; and that the first had no other effect then it had when it was executed; and that, as the assignees took a base fee only by the bargain and sale to them, the purchaser took no greater estate under the conveyance to him.

" This is the result of my consideration of this part of the title, and for the reason, I have suggested, I strongly incline to think it liable to the objections I have made.

9th September, 1799.

B.

XIV. *Whether a Bankrupt's Certificate, divests the Assignees of the legal Estate, so as to supersede the Necessity of their joining in a Recovery.*

CASE.

BY indentures of lease and release, estates were conveyed;

To *M. K.* for life, remainder;

To the first and other sons of her body successively in tail male, remainder.

To her daughters in tail as tenants in common, remainder.

To *I. K.* in fee.

*M. L.* married *I. C.* and died leaving *I.* her only son, and two daughters; Mary now the wife of *H. G.* and Elizabeth now the wife of *Charles W.*

*H. G.* after the marriage with the said *Mary* the daughter, became bankrupt; but has obtained his certificate. *I.* the son attained 21, and died unmarried, and without barring the said entail. *I. K.* is dead; and by will devised his reversion in fee.

By what means would you advise the daughters and their husbands to bar the entail and remainder, and gain a fee to themselves; and if either of the daughters should die without issue before the entail is destroyed, would her moiety survive to the other?

"I am of opinion, that the said *Mary* and *Elizabeth*, and their husbands, can, by executing a proper deed for making a tenant to the *præcipe*, and suffering a common recovery with treble voucher (in which *Mary* and her husband must be vouched, and they must vouch *Elizabeth* and her husband, who must vouch the common vouchee), bar the said entails and remainders over or reversion. If Mrs. *G.* should die without doing any act to bar the estate tail and remainder over, her moiety would go to *I.*'s devisee of the reversion, for want of cross remainders.

*Lincoln's Inn, April 19, 1773.*

"M. DUANE."

It seems to me, that the assets (if any) of the bankrupt's real estate should join; for the certificate could not divest them of the legal estate.

S. L.

## BANKRUPTS,

*Declared in the London Gazette, from January 3d to February 18th, inclusive.*

[The Solicitors' Names, and Dates of the Gazette, are preceded with a Crotchet.]

- 
- Alexander John, of South Lambeth, coal merchant. [Walter, Girdler's hall, Basinghall street, London. Jan. 31.
- Archer John, of Catharine's dock, hooperbender. [Saggers, Great St. Helens, Bishopsgate street, London. Feb. 21.
- Benstead William, and John Clark, of Halesworth, Suffolk, maltsters. [Mitchell, Saxmundham; and Robins, Gray's inn place, London. Jan. 3.
- Brown William, of High street, St. Giles's, hatter and hosier. [Hudson, Buckingham street, Fitzroy square. Jan. 3.
- Brockbank John, of Keswick, Cumberland, dealer. [Benson, Cockermouth; and Clayton and Scott, Lincoln's inn, London. Jan. 7.
- Badcock Richard, of Marcham, Berkshire, malster. [Morland, Abingdon. Jan. 7.
- Barker Thomas, of Brickwall, Herefordshire, victualler. [Cookney, Staples inn. Jan. 7.
- Beatson William and John, of St. Mary at Hill, merchants. [Palmer and Tomlinson, Warnford court, Throgmorton street. Jan. 14.
- Bate Fortesque, of Vigo-lane, London, printseller. [Dixon, Nassau street, Soho. Jan. 21.
- Betis Benjamin, and Ann Smith, of Basinghall street, London, factors. [Dann, Threadneedle street. Jan. 21.
- Bushnell Thomas, of Westminster road, Surrey, but now a prisoner in the King's beach prison, wheelwright. [Anthony, Earl street, Blackfriars. Jan. 21.
- Bosma William, late of Christopher street, Finsbury square, merchant. [Crowder, Lavie, and Garth, Frederick place, Old Jewry. Jan. 24.
- Beales William, of Bermonsey street, flour factor. [Rippon, Bermondsey street. Jan. 24.
- Barker Samuel, of Lane Delph, Staffordshire, manufacturer of earthenware. [Bagnell, jun. Stanley, Staffordshire; and Robins, Gray's inn place, London. Feb. 7.
- Bowerbank Joseph, of Camden street, Islington, coal merchant. [Harvey and Robinson, Lincoln's inn square. Feb. 7.
- Buckler John, the younger, of Warminster, Wilts, clothier. [Davies, Warminster. Feb. 7.
- Baxter Matthew, of Barnard Castle, Durham, innkeeper. [Frost, Hull; and Rosser, Kirby street, Hatton garden, London. Feb. 11.
- Bishop John, late of Epsom, Surrey, linen draper. [Gale and Son, Bedford street, Bedford row. Feb. 14.
- Bennet William, of Ivy lane, London, carpenter and builder. [Pearce and Dixon, Paternoster row. Feb. 14.
- Boor Whitfield, late of Sun street, Bishopsgate, timber merchant. [Russen, Crown court, Aldersgate street. Feb. 18.
- Birchdomew Whitelock, now or late of Carlisle, Cumberland green. [J. Hodson, Carlisle; and Wm. Hodson, Clement's inn, London. Feb. 18.
- Corden John King, of Rotherhithe, maltster. [Druce, Billiter square. Jan. 7.
- Clayton Thomas, of Kingston upon Hull, printer. [Watkins and Cooper, Lincoln's inn new square. Jan. 14.
- Curling Benjamin Stephen, Portland place, Clapham road, stone mason. [Gale and Son, Bedford street, Bedford row. Jan. 14.

## *Bankrupts.*

- Crabb John, James, and William, and Nicholas Latham, of Wilton, Wiltshire, clothiers. [Tierney, Salisbury; and Lowton, of the Temple, London. Jan. 14.
- Chivers William, of Siepney causeway, Middlesex, mariner. [Hind, Great Prescott street, Goodman's fields. Jan. 21.
- Chapman James Henry, of Gravesend, grocer. [Rigby, of New City chambers. Jan. 21.
- Chapman John, late of Nottingham, hosier. [Waller, Chesterfield; and Windus and Holloway, Southampton buildings, Chancery lane, London. Jan. 24.
- Colls Robert, of Woodford, Essex, corn dealer. [Wright and Bovill, Chancery lane. Jan. 24.
- Cranck William Charles, of Kensington, brewer and merchant. [Kearsey, Hare court, Temple. Jan. 28.
- Cruikshanks James, of Gerrard street Westminster, metal sash and fan light manufacturer. [Wedd and Day, Gerrard street. Jan. 31.
- Clarke John, of Tealby, Lincolnshire, paper maker. [Brown, Great Grimsby, Lincolnshire; and Grey, Gray's inn, London. Feb. 4.
- Crossley Thomas, of Manchester, dimity manufacturer. [Higginbottom, Ashton under Line. Feb. 4.
- Christian William, of Liverpool, attorney at law. [Stanistreet and Eden, Liverpool; and Windle, Bartlett's buildings, Holborn. Feb. 7.
- Cummins George, of the Griffin public house, Villiers street, London, victualler. [Dawson, Warwick street, Golden-square. Feb. 11.
- Cross James, Tisbury, Wilts, carpenter. [Davies, Warminster, Feb. 14.
- Davies Edward, of Ivy lane, London, furrier. [Wind, Warwick square. Jan. 7.
- Dunn Thomas, of Trowbridge, Wilts, clothier. [Williams, Trowbridge; and French and Williams, Castle street, Holborn, London.
- Dunham Nathaniel, of Line street, merchant. [Bosfield, Bouverie street, Fleet street.
- Dauney William, late of Windsor, Berks, apothecary. [Waldron, Reading.
- Denton Edward, of Dyer's buildings, Holborn, money scrivener. [Burdon, St. Andrew's court, Holborn. Jan. 23.
- Day Thomas, late of Grove hill, in the East riding of the county of York, ship carpenter. [Bentley, Beverley, York; and Messrs. Willis, Warford court, Throgmorton street, London. Jan. 31.
- Douel Henry, of Golden leg court, Cheapside, wholesale hosier. [Harrison, Abchurch lane. Feb. 4.
- Davies Samuel, of Manchester, dealer in cotton, twist, and weft. [Lingard and Dale, Stockport; and Cooper and Lowe, Southampton buildings, Chancery lane, London. Feb. 11.
- Dashwood Francis Bateman, late of Gain's hill, Huntingdon, worsted manufacturer. [Parker, Palmer, and Cuppage, Essex street, Strand. Feb. 14.
- Edgar John, of Blackburn, dealer and chapman. [Dewhurst, Blackburn. Jan. 7.
- Everett Thomas, and Joseph Bishop, late of Wells, Norfolk, ship builders. [A. and E. Isaacs, George street, Minorics. Jan. 10.
- Emmett Hugh, of Manchester, colourman. [Sharp and Eccles, Manchester.
- Emdin Abraham Compert, of Portsmouth, shopkeeper. [Berry, Wainbrook. Jan. 21.
- Emerson Thomas, late of Stoney Stratford, Buckingham, grocer. [Worley, Stoney Stratford; and Kinderley, Long, and Ince, Symond's inn, London. Jan. 24.
- Eyous Philip, of Hungerford market, Strand, oyster merchant. [Loxey, Cheapside. Feb. 7.
- Eames John, of Leicester, cheese factor. [Lawton, Leicester; and Taylor, Southampton buildings, Chancery lane, London. Feb. 11.
- Estill John, of Scarborough, ship owner. [Hutchinson, Sunderland; and Sansum, Ely place, London. Feb. 11.
- Finden James, the younger, of Clipstone street, St. Mary le bone, carpenter. [Jeyes and Turner, Charlotte street, Fitzroy square. Jan. 21.
- Fenn Richard Spencer, of Suffolk lane, London, dry salter. [Williams and Sherwood, Bink street, Cornhill. Feb. 4.
- Fletcher Joseph, of Church street, Stoke Newington, carpenter. [Jones, Mayor's court office, Royal Exchange. Feb. 11.
- Ford James, of Chiswell street, shoemaker. [Russell, Lant street, Borough. Feb. 18.

## *Bankrupts.*

- Fletcher Elias, of Sowerby, in the parish of Halifax, Yorkshire, wool stapler. [Allen and Exley, Furnival's inn, London; and Haworth and Wilcock, at Riponden and Halifax. Feb. 21.
- Gould John, of Harrington, Worcestershire, paper manufacturer. [Cheek, Evesham; and Bousfield, Bouverie street, Fleet street, London. Jan. 7.
- Green John, and James, of Laidborough, Manchester, haberdashers, and partners. [Knight, Manchester; and Ellis, Cursitor street, London.
- Gregory Thomas, of Tabernacle walk, St. Luke's, plumber. [Crawford, Craven's buildings, City road. Jan. 21.
- Gameaw Joseph Augustine Victor, of Albemarle street, bookseller. [Owen and Hicks, Bartlett's buildings, Holborn. Jan. 28.
- Hamerton Thomas, of Lyng, Norfolk, paper maker. [Hamerton, Lyng. Jan. 7.
- Hodson Henry Loftus, of Huntingdon, merchant. [Sweeting, Huntingdon; and Cooper and Lowe, Southampton buildings, Chancery lane, London. Jan. 7.
- Hall Thomas, Berwick upon Tweed, merchant. [Carruthers, jun. Clement's inn. Jan. 7.
- Hasell William, late of Ramsbury, Wilts, mealman. [Bennet, Ramsbury; and Price and Williams, Old Buildings, Lincoln's inn, London. Jan. 10.
- Hamilton James, and William Tuckington, of Finch lane, merchants. [Hindman, Dyer's court, Aldermanbury. Jan. 14.
- Hewitt Henry, Henry Roch, and Thomas Postlethwaite, of Sheffield, silver platers. [Rodgers, Sheffield; and Biggs, Hatton garden, London.
- Hindley Richard, and Wm. Wakefield, of Manchester, manufacturers. [Mr. Ed. Foulkes, Manchester; and Mr. John Foulkes, Bury place, Bloomsbury, London. Jan. 28.
- Hughes James Fletcher, of Wigmore street, Cavendish square, stationer. [Shepherd, Bartlett's buildings, Holborn. Jan. 31.
- Hives John, of Ilkeston, Derbyshire, baker. [Cutts and Sanders, Nottingham; and Mac Dougall and Hunter, Lincoln's inn, London. Feb. 4.
- Hill William, of Bristol, jeweller. [Thomas, Bristol; and Messrs. Edmunds, Exchequer office of pleas, Lincoln's inn, London. Feb. 4.
- Hoffman Burgess Andrew, of Charles street, Covent garden, tailor. [Senior, Charles street. Feb. 11.
- Harrison, George, of Manchester, merchant. [Knight, Manchester; and Ellis, Cursitor street, London. Feb. 11.
- Howell James, late of Stratfieldsaye, Southampton, farmer. [Bird, Andover, Hants. Feb. 11.
- Hays John, Thomas street, Southwark, butcher. [Clark, St. Paul's college, St. Paul's church yard. Feb. 18.
- Jarrett Thomas, of Evesham, Worcester, innholder. [Cheek, Evesham; and Bousfield, Bouverie street, Fleet street, London. Jan. 21.
- Johnson William, of Vauxhall, Lambeth, coal merchant. [T. Lamb, Bedford street, Bedford-square. Jan. 28.
- Jones Richard, late of Lanvapey, Monmouth, wood dealer. [Price, Abergavenny; and Price and Williams, Lincoln's inn, London. Feb. 14.
- Laurie John, of Brentwood, Essex, draper. [J. and R. Willis, Warrford court, Throgmorton street. Jan. 14.
- Lythgoe Nathan, of Liverpool, timber merchant. [Sanistreet and Eaden, Liverpool.
- Levy Jacob Israel, of Brighton, Sussex, merchant. [Hayward, Jewry street, Aldgate. Jan. 31.
- Law James, of Hepstanstall, Yorkshire, cotton spinner. [Jones, Manchester; and Edge, Inner Temple, London. Feb. 4.
- Leeming Thomas Preston, Lancashire, John Myers, Cockheaton, Yorkshire, and William Chapman Preston, worsted manufacturers. [Evans, Theives Inn, London; and Crossley, Bradford. Feb. 18.
- Lucas Thomas, and James Phillips Lucas, of Birmingham, auctioneers. [Kinderley, Long, and Ince, Symond's Inn, Chancery-lane, London; and Palmer, Birmingham. Feb. 21.
- Marrison Samuel, of St. Albans, corn dealer. [Harvey and Robinsons, New-square, Lincoln's inn. Jan. 14.
- Mitlaud David, of Wigan, Lancaster; Walter Campbell, of London; and William Wright, of Liverpool, cotton manufacturers. [Murray, Liverpool; and Blackstock, Figtree court, Temple, London.

## *Bankrupts.*

- Mason John, of Snowhill, shoemaker. [Heard, Hooper square, Goodman's-fields. Jan. 17.]
- Merson Edward, of Ilminster, Somersetshire. [Adams, Old Jewry, Cheapside, London. Jan. 21.]
- Mast Thomas, of Tempsford Mills, Bedford, miller. [Metcalf, Wisbeach; and Baxters and Martin, Furniva's Inn. Jan. 24.]
- Moffatt David, of Fleet Market, grocer. [Rivers, Basinghall lane, London. Feb. 4.]
- Marsh Absalom, of Aldgate, jeweller. [Kibbiewhitte, Gray's Inn place, London. Feb. 7.]
- Meeske Henry, of Edward-street, Titchfield street, taylor. [Corren, Clifford's Inn, Fleet street, London. Feb. 7.]
- Mills James and John, of Wood, in Saddleworth, Yorkshire, merchants. [Delph, Saddleworth; and Batty, Chancery lane, London. Feb. 11.]
- Merton Thomas, of Hornet, in Middlesex. [Waiter and Unwin, Shadwell. Feb. 11.]
- Mackenzie John, late of the City Chambers, Bishopsgate street, merchant. [Swann and Warrington, Fore street. Feb. 14.]
- Mills John Trott, late of Bridgewater, Somersetshire, rope maker. [Blake and Son, Cooke's court, Searle street, Lincoln's Inn. Feb. 21.]
- Nettleship John, of Moorgate, Nottingham, baker. [Clarke, Banskil, Nottingham; and Young, New Inn, London. Jan. 17.]
- Neeves John, of Scend, Wiltshire, mealman. [Moule, Melksham; and Tograut and Moule, Chancery lane. Feb. 21.]
- Pyall Joseph, late of Sittingbourne, Kent, shopkeeper. [Bdfield, Lawrence-lane. Jan. 3.]
- Phillips George, late of Brooke street, Ratcliffe, timber merchant. [Bart, Gold-square, Crutched Friars.]
- Papillon Peter James, St. Swithin's lane, London, merchant. [Pearce and Dixon, Paternoster row. Jan. 17.]
- Petrie John Kempton, and John Ward, of Hanworth, Middlesex, dealers. [Jackson, Fenchurch street buildings. Jan. 21.]
- Policy John, of St. Giles's, Oxford, sackmaking manufacturers. [Walsh, Oxford; and Townsend, Staples Inn, London. Jan. 21.]
- Price John, of Finsbury square, merchant. [Williams and Sherwood, Bank street, Westminster. Jan. 24.]
- Pinch John, of Bathwick, Somerset, carpenter. [Bowsher, Bath; and Constable, Symond's Inn, Chancery lane, London. Jan. 28.]
- Parrott William Jackson, of Leighton Buzzard, wine and brandy merchant. [Druce, Billiter square, Fenchurch street. Feb. 7.]
- Parker John, of Sheffield, York, scrivener. [Rimington and Wake, Sheffield; and Wilson, Cattle street, Holborn, London. Feb. 14.]
- Porteus W. of Chippenham, Wilts, coal merchant. [Hervey, Chippenham; and Houghton, Clement's Inn, London. Feb. 18.]
- Pearce Samuel, of Exeter, jeweller. [Turner, Exeter; and Williams and Brooks, New square, Lincoln's Inn, London. Feb. 18.]
- Platt Henry Billinge, Wigau, Lancaster, calico manufacturer. [W. Gashell, Wigau; and Windle, Bartlett's buildings, Holborn. Feb. 21.]
- Pugh William, late of Betwick street, Soho, taylor. [Phillipson, Holborn court, Gray's Inn. Feb. 21.]
- Richold Michael, of Brighthelmstone, Sussex, wine merchant. [Swaine and Stevens, Old Jewry. Jan. 3.]
- Roberts Lewis, Blanford, Monmouth, timber merchant. [Sherwin, Great James street, Bedford row. Jan. 10.]
- Ringrose John, of York, vintner. [Tate, York; and Allen and Exley, Furnival's Inn, London. Jan. 24.]
- Reddish Thomas, otherwise Thomas Solomon Reddish, Bucklersbury, warehouseman. [Foukes, Bury place, Bloomsbury. Jan. 24.]
- Robins Mary and Catharine, of Birmingham, shopkeepers. [Richardson, Monument yard. Jan. 24.]
- Roe Robert and Christopher Moore, of Bristol, merchants. [Messrs. Leman Bristol; and Fraser, Gray's Inn, London. Jan. 31.]
- Rogers Peter, of Warrington, Lancashire, shopkeeper. [Barnett, Manchester; and Huxley, Temple, London. Feb. 4.]



## *Bankrupts.*

- Ransome John, of Little Walsingham, Norfolk, shopkeeper. [Decker, Little Walsingham; and Wellington and Small, Inner Temple, London. Feb. 7.]
- Riding Robert, the younger, of Colne, Lancaster, cotton manufacturer. [Taylor, Manchester; and Ellis, Cursitor street, London. Feb. 14.]
- Roe John, of Ombersley, Worcestershire, horse dealer. [Hore, Garlick hill. Feb. 18.]
- Richards John, of Holborn, hosier. [Maddock and Stevenson, Lincoln's Inn New square. Feb. 21.]
- Scott John, and Charles Stewart Bissett, of Liverpool, merchants. [Dardis, Liverpool; and Kearsey, Hare court, Temple, London. Jan. 7.]
- Saunders James, of Charlotte street, Old street road, builder. [Crawford, Craven buildings, City Road. Jan. 7.]
- Swan John, of Wapping Wall, mast and block maker. [Shepherd, Bartlett's buildings, Holborn. Jan. 14.]
- Saunders John, Painswick, Gloucester, money scrivener. [Biddle and Paislow, Wotton under Edge, Gloucestershire; and Blandford and Sweet, Temple, London. Jan. 17.]
- Stopes Aylmer, Britwell Prior, Oxford, dealer and chapman. [Cooke, Wallington, Tetsworth, Oxfordshire.]
- Smith Thomas, of Gould's Hall, Ratcliffe Highway, linen draper. [Burroughs, Castle street, Falcon square. Jan. 24.]
- Skill John, of the Strand, oilman. Hodgson, Charles street, St. James's square. Jan. 31.]
- Smith Thomas, of the White Hart, Deptford, victualler. [Messrs. Isaacs, George street, Minorics. Feb. 7.]
- Shelley Thomas, of Lane Delph, Staffordshire, potter. [Griffen, Stone, Staffordshire; and Biddeley, Seile street, Lincoln's Inn. Feb. 7.]
- Swindals John, and John Dale, the younger, of Hodge Mill, Chester, cotton manufacturers. [Newtons, Stockport; and Cooper and Lowe, Southampton buildings, Chancery lane, London. Feb. 11.]
- Sellers Bezar Leonard, of the Crown Office, Inner Temple, money scrivener. [Digges, Maddox street, Hanover square. Feb. 11.]
- Sexton John, of Limekiln road, Greenwich, potter. [Bousfield, Bouverie street, Fleet street. Feb. 11.]
- Sainsbury Richard, of Bath, coach master. [Sheppard, Bath; and Sheppard and Adlington, Gray's Inn square, London. Feb. 11.]
- Samforth Samuel, the younger, and John Cartledge Newbold, Chesterfield, Derby, potters. [Bower, Chesterfield; and Maddock and Stevenson, Lincoln's Inn, London. Feb. 14.]
- Sayer John, late of Paternoster row, London, now of Buckingham, lace merchant. [Allen, Stony Stratford; and Philpot and Stone, Hare court, Temple. Feb. 21.]
- Taylor George, of Leek, Staffordshire, shopkeeper. [Mills, Cruso; Jones, Leek; and Townsend, Staples Inn, London. Jan. 14.]
- Tainiswood Samuel, of Pentonville, Middlesex, currier. [Perring, Lawrence Poulteney Hill. Jan. 14.]
- Tomlins William, of Bridge road, Lambeth, coach maker. [Burgoyne and Fielder, Duke street, Grosvenor square. Jan. 21.]
- Thomas Charlotte, of New Bond street, milliner. [Eves, Chapel street, Bedford row. Jan. 21.]
- Townsend John, of Stones End, Southwark, wine merchant. [Teasdale, Bishopsgate street. Jan. 24.]
- Trussan Margaret, late of Friston, Suffolk, dealer. [Rabett, Carlton, Suffolk. Jan. 28.]
- Taylor Edward, of Blackburn, Lancashire, linen draper. [Dewhurst, Blackburn. Feb. 4.]
- Toller John, of Mountsorrell, Leicestershire, miller. [Bond, Leicester; and Bleasdale and Alexander, New Inn, London. Feb. 7.]
- Tree Samuel, of Portsmouth, victualler. [Hector, Portsea; and Willshecn, Gray's Inn square, London. Feb. 18.]
- Townsend Samuel, of Paradise row, Chelsea, Middlesex, rectifier. [Phillips, Wandsworth. Feb. 18.]
- Thacker Charles, jun. of Caiston, near Great Yarmouth, seedsman. [A. Taylor, jun. Norwich; and Lime, Gossmith's Hall, London. Feb. 18.]

## *Bankrupts.*

- Upcot John Rudge, of Bedminster, Somerset, grocer. [Hall and Jarman, Bristol; and Tarrant and Moule, Chancery lane, London. Jan. 21.]
- Vince Eldson Anthony, of Grinstead, Essex, merchant. [Sudell, Colchester; and Evans, Thaives Inn, London. Jan. 24.]
- White James, of Newnham, Gloucester, patten-ring maker. [Hallen, Kidderminster, Worcestershire; and Bigg, Hatton Garden, London. Jan. 3.]
- Webster William, of Fore street, linen draper. [Fisher, Bread street, Cheapside. Jan. 14.]
- Widows James, of Manchester, calenderer. [Kearley and Cardwell, Manchester; and Ellis, Cursitor street, London. Jan. 17.]
- Whiteley Alice, of Hampson Mills, near Bury, Lancaster, woollen dyer. [Duckworth and Chippendall, Manchester. Jan. 17.]
- Winterburn Thomas, of Whitley, York, shopkeeper. [Russell and Bourne, York; and Cardale, Hallward, and Speare, Gray's Inn. Jan. 24.]
- Wallis John, of Great Queen street, Lincoln's inn fields, druggist. [Ayrton, Field court, Gray's Inn. Feb. 7.]
- Walker Samuel, of Manchester, cotton manufacturer. [Partington, Manchester; and Hurd, King's Bench Walk, Temple, London. Feb. 11.]
- Williams James, of Haverfordwest, Pembrokeshire, shopkeeper. [Morgan, Bristol.
- Wheeler John, of Wednesbury, Stafford, iron master. [Coupland, Shrewsbury; and Rosser, Kirby street, Hatton Garden, London. Feb. 11.]
- Ward Daniel, and Robert and Daniel Ward, Bishopsgate street, tailors. [Willett and Annesley, Finsbury square. Feb. 11.]
- Willmot William, of High street, Borough, stationer. [Swain and Stevens, Old Jewry, London. Feb. 11.]
- Willis Thomas, of Bath, carpenter. [Taylor, Bath; and Pearson, Pump court, Temple, London. Feb. 14.]
- Wright William, of Broadway, Westminster, victualler.
- Walton William, of Wribbenhall, Kidderminster, Worcester, ionkeeper. [Hallen, Kidderminster; and Bigg, Hatton Garden, London. Jan. 28.]
- Weeley J Weeleigh, Essex, dealer and chapman. [Sutton and Edge, Colchester; and Wharton and Dyke, Lamb's buildings, Temple, London. Jan. 28.]
- Walters, Thomas, of St. Paul's, Shadwell, biscuit baker. [Walter and Unwin, Shadwell.]
- Wilkinson John, the younger, of Lower Grosvenor place, Hanover square, dealer and chapman. [Watkins and Cooper, Lincoln's inn New square. Jan. 31.]
- Williamson John, of Liverpool, cheesemonger. [Royle, Chester. Jan. 31.]
- Wild Christopher, of Manchester, victualler. [Whetherall, Manchester; and Shepherd and Adlington, Gray's Inn, London. Feb. 4.]
- Wood Robert, and George Payne, of Liverpool, wholesale grocers. [Lace and Hassall, Liverpool; and Atkinson, Chancery lane, London. Feb. 4.]
- Wright John, of Southampton, grocer. [Minchin and Compigne, Gosport; and Tarrant and Moule, Chancery lane, London. Feb. 4.]
- Weeden Joseph, of Oxford street, oilman. [Teasdale, Bishopsgate street within. Feb. 4.]
- Wood Robert, of Doncaster, ironmonger. [Blandford and Sweet, Inner Temple, London; and Stevens, Bristol. Feb. 14.]
- Young John, of Long acre, coach maker. [Ward, Dennett, and Greaves, Henrietta street, Covent garden. Jan. 28.]
- Young James, of Southampton, linen draper. [Nicholls and Nettleship, Queen street, Cheapside, London. Jan. 31.]
- Yerwood Richard, of Stockport, Cheshire, spade maker. [Lingard and Dale, Stockport; and Joseph Edge, Inner Temple, London. Feb. 21.]

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\*\*\* In compliance with the request of several correspondents, we have determined to insert the list of Bankrupts. We shall therefore give a list for two months in each of the two following numbers, and then proceed with them monthly.

ACCOUNT AND ANALYSIS  
OF  
NEW LAW BOOKS,

WITH OCCASIONAL REMARKS.

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ARTICLE IV.—*A Compendium of the LAW OF EVIDENCE. By THOMAS PEAKE, Esq. of Lincoln's Inn, Barrister at Law. Second Edition, with considerable Additions.*—Brooke and Clarke, Bell-yard, Temple Bar. 1804. 8vo. pp. 194.—*With an Appendix, pp. xlv.*

THE LAW, or, as we may speak with almost equal propriety, *the Rules of Evidence*, whether in a practical or a merely theoretical view, may be considered as a most important branch of the study of an English lawyer; and accordingly, though we have not, perhaps, so many writers upon the various divisions of the subject as are to be found amongst the Jurists of those nations in which the Roman or civil law obtains in its full force, we have had more than one separate digest of it; independently of those contained in the systematic abridgments of a more general and comprehensive nature. Of these, the principal are, *Trials per Pais*, the *Theory of Evidence*, since incorporated into the *Introduction to the Law of Nisi Prius*, and the *Law of Evidence*, by Lord Chief Baron Gilbert. The latter work, like all those which came from the same hand, has been long esteemed as a comprehensive and able survey of an extensive subject; but unfortunately, being a posthumous publication, at the same time that it proves the ability, the indefatigable industry, and the enlarged views of its author; which grasped, with a gigantic energy, at the whole system of English law, in all its complication and variety, it leaves us to regret that he who could conceive, and in so great a degree execute, so noble a plan, was not permitted in any one instance, among various attempts, to complete the superstructures, of which he had laid the foundations; but was compelled to leave it finally to posthumous editors, to be the finishing architects of his fame. These rules,

though originally founded on immutable principles, give rise to various illustrations and distinctions which occur in the practice of every day; and however comprehensive the work of the *Chief Baron* may be, it is become daily less suited for the use of the practical lawyer, who requires a compendious but correct *manual* to consult on every occasion of difficulty, in the hurry of *Nisi Prius* business; where questions occur unexpectedly, and require a speedy decision. For this purpose the *Theory of Evidence* was compiled, and afterwards incorporated into the *Introduction to the Law of Nisi Prius*; a work which, however eminently useful formerly, and still deserving great commendation for the accuracy and brevity with which the substance of the law on so many subjects is laid down, has been left nearly in the same state as it was originally published; whilst almost every work of equal celebrity has been loaded with additions, notes, marginal references, and indexes, in all the spirit of labourious erudition which characterizes the most exuberant commentator of *Leipsic* or of *Leyden*.

It is to be regretted, therefore, that this book, from which most students derive their first knowledge of the points of law immediately relating to *Nisi Prius* practice, has scarcely received the addition of a single note of reference, in the course of the many years, since it was first re-edited by the judicious but *sparing* hand of the late Mr. Justice Buller.

Mr. Peake has endeavoured to supply our wants, in part, by a treatise, which, if it be not strictly modelled after has at least taken its *germ* from, the chapter upon Evidence in that work. In our opinion, it does indeed fully supply the deficiency; and we are happy to find that he has been gratified by a speedy sale of a first edition, which might well have been anticipated from its general utility. We have taken this notice of preceding writers on the subject, in order to stimulate the Author in his proposed work upon the *Evidence on particular Issues*; which in his preface to the present edition, he announces his intention of publishing, at the suggestion of some of his friends. What is the precise nature of his plan, he has given us no means to conjecture; but if it comprehends the whole range of *Nisi Prius Law*, we are convinced that Mr. Peake will have no occasion to regret that he has followed this advice.

We shall now proceed to examine the work before us; which treats of *evidence* under the following arrangement:

I. Of the general rules of evidence.—II. Of written evidence. 1. Records; 2. Public writings not of record;

3. Of the inspection of public writings; 4. Private writings; 5. Of evidence in explanation of written instruments. III. Of parol evidence.—1. Of persons incompetent to give evidence by reason of the imbecillity of their understandings; 2. Of persons incompetent by reason of the infamy of their characters; 3. Of persons incompetent by reason of their interest; digest of cases, as to the interest of witnesses; 4. Of persons incompetent by reason of the relation they stand in to the parties; 5. Of persons privileged from examination; 6. Of the examination of witnesses; 7. Of procuring the attendance of witnesses, &c.

APPENDIX.—N°. 1. Case of the King against Eriswell; 2. Case of *Bent v. Baker*; 3. Cases of *Abrahams v. Bunn*, and *Smith v. Prager*; 4. MS. cases cited in this work.

In the preface to the first edition the Author says,

“Though of small size, this work has been attended with a considerable labour; reference has been had to all the cases cited, and no reliance placed on Digests, Abridgments, or former Treatises on the subject.” If this laudable course of industry has been strictly pursued, of which we find no reason to doubt, the Author has well entitled himself to the approbation of his readers; and given an example which we wish may be followed by all future compilers of *Digests*, *Abridgments*, *Treatises*, *Institutes*, and *Elements* of law; under whatever title they may be ushered forth to the world. It is neither to be expected nor to be desired that in a legal treatise, originality, except in the mere form of enunciating positions and arranging the materials, can be laid claim to by the compiler. It is his business to detail the parts of the system as they have subsisted for ages, or are newly established by authority, not to increase it by novelties of his own creation; to record, and not to invent; to observe, to explain, and to elucidate; not to alter what is settled, to repair what is bad, or supply what is defective; but when he observes, let him look with his own eyes; when he professes to explain, let it be with the assistance, not merely through the intervention and agency of others; and when he suffers us to be guided by their lights, let him first examine well, for his own part, whether they be false or true. If these rules were attended to in all cases, we should have fewer books, perhaps, because they would cost the writers more labour; but we should no longer see *Comyns*, *Bacon*, and *Viner*, hashed up without discrimination, though not without disguise, in so many various dishes. On the contrary,

we should have what is valuable in them, and it is no small stock, for the literary cooks of modern days, extracted with skill, after it had been picked and examined with accuracy; and, instead of the errors of the old abridgments, like an hereditary disease, entailed from generation to generation, vitiating all their followers, we should behold each of the new progeny in succession growing more pure, as he was more remote in his descent, and become wholly purged and defecated in the course of time by the repeated corrections of well directed skill. Could we impose laws on the republic of letters, we should require that this profession of the Author should be subscribed by every future compiler, and stand in the front of his book, like the *imprimatur* of the licencers of old, as a passport to the press; or that each should own, submissively, what he has taken from others, and consent to have every borrowed plume branded with a mark, to denote the wing from which it is *immediately* plucked, in order that we may trace it in every hand through which it has passed.

In noticing the additions which have been made in this edition, Mr. *Peake* particularly distinguishes some observations on the question, how far verdicts in criminal cases can be evidence in civil actions; and modestly adds,

“ These observations were committed to paper before the publication of the first edition; but thinking that Mr. *East* might, in his promised work on the Crown Law, have thrown some light on the subject, and feeling the difficulty of it, I then purposely omitted them. That gentleman, however, having (p. 994) but slightly glanced at this point, without professing to enter into it, I have now ventured to publish my own observations. They are merely such, and I would caution my younger readers against giving any weight to them, further than they are supported by reason and authority. The subject is, perhaps, the most important of any in the jurisprudence of the country; as upon the effect of these judgments may, in a great measure, depend the administration of its criminal justice; and the diversity of opinion which seems to have been entertained on this point by the greatest names in the profession, will, I hope, be an apology for me, in case the conclusion I have endeavoured to draw should appear to be erroneous. Whether it should (according to the doctrine which seems to have been held by Lord *Hardwicke*) be decided that such judgments *are in no case admissible* as evidence in a civil action; or, agreeably to the opinions alluded to by Lord *C. B. Gilbert*, be held that they are *inadmissible where the party in the civil suit was examined in the criminal prosecution*, the same consequence will, I conceive, equally follow, viz. that the party injured may be a witness on the indictment. But if, as others have thought, the direct determination of a fact in a criminal prosecution is in all cases evidence of that fact, *for all per-*

sons, whether examined on the indictment or not, the party injured will certainly, in many instances, have that direct interest which disqualifies him from giving evidence."

The following extract, on a subject which has lately excited much discussion in the legal world, and which we noticed slightly in our review of *Mr. Pott's Compendious Law Dictionary*, in our last Number, we doubt not will be as acceptable to our readers as it is creditable to the abilities of the author.

"The practice of asking a witness, either on the *voir dire*, or on cross-examination, any question, except such as might tend to make him accuse himself of a crime of which he had not been convicted, and thereby expose himself to prosecution; had so long continued without objection, that no one at the bar thought of questioning the legality of it. But some of the Judges, struck perhaps with the injury which may, in some few instances, have been done to the feelings of an honourable and virtuous mind; and relying on the *dicta* of some of their predecessors, have lately thought that neither convenience nor authority justify this mode of examination; and have therefore laid it down as a rule, that a witness shall not be rendered *infamous*, or even *disgraced* by his own examination, as to facts not connected with the cause in which he is examined. The highest and most enlightened characters in the profession are, at present, much divided on this point; and as the question may still be considered as undetermined, it would be unbecoming, in a work of this nature, to do more than shortly to state the arguments which have been, or may be used on the one side and the other, and also such authorities as I have been able to find on the subject.

"Those who contend for such a mode of examination assert, that if it is not to prevail to the fullest extent, the whole benefit of *circa voce* evidence, and trial by jury, will be lost and at an end: that the office of a jury is not to find facts merely because they are sworn to by witnesses, but to weigh and estimate the credit which is due to persons standing in that situation: that, to enable them to do this, it is necessary for them to know something about the life and character of the person testifying; and that such was the ancient policy of the law, appears from the circumstance of the jury being always summoned *de vicineto*, from the neighbourhood of the place where the cause of action arose: "Living in the neighbourhood, "they were properly the very country or *pais* to which both parties had appealed, and were supposed to know beforehand the "character of the parties and their witnesses, and therefore the "better knew what credit to give to the facts alleged in evidence." Whereas now, the jury being summoned from the country at large, the witnesses are, in general, entirely unknown to them, and the party against whom they appear, having no notice of the witnesses who are to be called against him, has no other mode of enabling the jury to determine what credit is due to them, than by an en-

quiry of themselves, who they are, and how they have passed their lives. That no injury either to the witness or the cause of justice can result from this enquiry, for no honest man will refuse to give an account of himself; and if insinuations, which are unfounded, are thrown out, he has the opportunity of denying the truth of them; which denial, if made in the unequivocal and decided manner which conscious innocence will always dictate, will, instead of prejudicing the character of the witness, throw all the odium intended to be cast on him by the charge, on the person who had the wickedness to suggest it. Whereas, if it be true, that the witness is of a cast and character which does not entitle him to full credit, he ought not to pass as a man of unblemished reputation.

On the other hand it is said, that a person who comes into a court of justice to testify in a particular cause, is not supposed to be prepared to answer for all the transactions of his life; that one slight deviation from the path of virtue ought not so to blast the character of a man as to be for ever the subject of reproach to him; and that when he comes into court, not as a volunteer, but under the compulsory process of the law, he ought not to be placed in such a situation as to be obliged either to confess, and revive the memory of a disgrace which had long since been forgotten, and which his subsequent good conduct had wiped away, or else to be tempted to commit perjury for the protection of that character which his amended course of life had procured him. That if he is wholly incompetent, by reason of the commission of a crime of which he has been legally convicted, the record of his conviction, which contains the particulars of his infamy, is the only evidence to repel his testimony. That if he is not worthy of credit, on account of his general bad character, the law has, in that case also, pointed out the means of counteracting the effect of his evidence by the testimony of others as to that character. That even in this case particular circumstances are not to be enquired into, much less ought he himself to be questioned as to those facts which others cannot be permitted to prove. That though in some instances the party may be surprised by finding a witness in the box, of whom he has no previous knowledge, yet this so rarely happens, that it is infinitely less mischievous to submit to the inconvenience which a person so circumstanced might experience, than to establish, in every case, a course of practice so highly injurious to the feelings of every man appearing as a witness. But that even here, the party is not without remedy: if he makes it appear to the satisfaction of the court that he was surprized by the appearance of a stranger; that such stranger is a man of infamous character, or that the evidence which he has given is untrue, and can be contradicted by other witnesses; the court, exercising a sound and equitable discretion, may send the cause back to be reconsidered by another jury.

“Unfortunately, no direct authorities are to be found either one way or other. Loose dicta, or equivocal expressions, are all that occur to direct our judgment, and though there are some cases



which seem to bear a strong analogy, yet it must be recollected, that the argument thence arising is counteracted by what is admitted to have been the established and invariable practice for a considerable space of time.

“ Lord Coke, speaking of challenges to jurors, says: “ If the “ cause of challenge touch the *dishonour* or *discredit* of a juror, he “ shall not be examined upon his oath ; but in other cases he shall “ be examined upon his oath to inform the triers.” As far as the case of a juryman is analogous to that of a witness, this is certainly an authority in favour of those who maintain that such an examination is illegal ; but it must be observed, that the same necessity does not exist in the case of a juror as does in that of a witness. The pannel is made out and known to the parties long before the trial ; they have an opportunity of inquiring as to the characters and course of life of the persons named in it ; and, if they find any thing which destroys the *competency* of a juror, they may be prepared to prove it. His *character*, in respect of matters which would not exclude him from sitting in judgment on a cause, and which forms so essential an inquiry when estimating the *credit* due to a witness, can never be the subject of inquiry ; nor is at all necessary for the purposes of justice that any such inquiry should take place ; for if either party dislikes him, he may object to him without assigning any reason whatever ; and may extend this peremptory challenge to such a number of jurors as is sufficient to remove the fears of the most cautious and timid. The case of a juror, therefore, differs materially from that of a witness, and as far as the credit due to the latter forms any part of the consideration of the jury, bears no analogy whatever.

But the case which has been principally relied on, on some late occasions, is that of *Peter Cooke*, who being indicted for treason, in order to found a challenge for cause, asked a juryman, whether he had not said he believed him guilty ; when the whole court determined, that the juryman was not obliged to answer the question.

“ Lord C. J. Treby said, “ You may ask upon the *voire dire*, “ whether he have an interest in the cause ; nor shall we deny you “ liberty to ask, whether he be fitly qualified, according to law, “ by having a freehold of sufficient value ; but that you may ask a “ juror, or *witness*, every question that will not make him criminal that’s too large. Men have been asked, whether they have been “ convicted and pardoned for felony, or whether they have been “ whipped for petty larceny ; but they have not been obliged to answer ; for, though their answer in the affirmative will not make “ them criminal, nor subject to punishment, yet, they are matters of infamy ; and if it be an infamous thing, that is enough to “ preserve a man from being bound to answer. A pardoned man “ is not guilty ; his crime is purged ; but merely for the reproach “ of it, it shall not be put upon him to answer a question, whereon “ he will be forced to forswear or disgrace him. So persons have “ been excused from answering, whether they have been committed “ to Bridewell as pilferers or vagrants, or to Newgate for clipping

"or coining, &c. Yet to be suspected is only a misfortune and shame, no crime. The like has been observed in other cases of odious and infamous matters, which are not crimes indictable."

Mr. *J. Powell* clearly considered this as tending to charge the juror with a crime, for after saying it might have been asked in a civil cause, because he might have been a referee, he added, "But if you make it criminal it cannot be asked, because a man is not bound to accuse himself." Mr. *Baron Powis* adopted the same line of argument as the Chief Justice, saying, that though it did not make him infamous in the eye of the law, "yet that it was a shameful thing for a man to give his judgment before he had heard the evidence, and therefore that the prisoner ought not to ask him, to make him accuse himself, if it be opprobrious matter upon him." But it is observable, that he said nothing in respect of such questions being put to a witness.

"As a decision, therefore, this case extends no further than what was before said by Lord *Coke*. The application of the doctrine to witnesses depends entirely upon the *dictum* of Lord Chief Justice *Treby*, who mentions no particular instance in which it had been so applied. It is, nevertheless, the *opinion* of a great judge, and as such not to be lightly or irreverently treated.

"The last authority which I find in the books is what is said by Lord *Hardwicke*, presiding as Lord High Steward, on the trial of Lord *Lovat*, where Lord *Talbot* proposing to ask a question of one of the witnesses before he was sworn, Lord *Hardwicke* said: "The ordinary method of proceeding in these cases is, that when a witness is produced, he is to be sworn in chief, unless there be some objection to his competency; and then he is to be sworn upon a *voire dire*. After he is sworn in chief, the party who produces him asks him such questions as he thinks proper. After which the other party is at liberty to cross-examine him, either to the matter of fact concerning which he has been examined, or any other matter whatsoever, to impeach his credit or weaken his testimony; provided the questions that are asked are such as the law allows."

It is observable, that Lord *Hardwicke* makes no distinction as to the nature of the incompetency which may be inquired into on the *voire dire*; but the qualification which is added by him as to questions on the examination in chief, has thrown a degree of obscurity on what would otherwise have been very clear. It should seem, however, that his lordship could only have in contemplation, when he made that qualification, an examination as to Crimes for which the witness would be punishable; for he expressly extends the power of cross-examination to matters concerning which he had been examined, or any other matter whatsoever which should tend to impeach his credit. He does not confine it to the explanation of what he had before sworn, or to the introduction of new matter as evidence in the cause; but he permits the party to enquire of the witness himself into matters foreign to the cause, merely for the purpose of impeaching his credit, or in other words, of disgracing him. On

the other hand, what is said by Lord Chief Justice *Treby* is decisive against such a mode of examination; and when we see that great authority on the one hand, and the uniform practice of the bar for a series of years countenanced, as it seems to be, by the opinion of Lord *Hardwicke* on the other, we cannot but consider this as a doubtful point, and one which it is highly important should be judicially and solemnly decided."

The statement of the question, the review of the authorities, particularly the distinction between the case of a jurymen and a witness, together with the summary of the arguments on either side, which we have here selected, is neat, perspicuous, just, and accurate, and though concisely delivered, is complete and comprehensive. That it concludes without a direct opinion is perhaps to be attributed only to the judicious caution of the Author, who considered, that probably while he wrote, it was in progress to be decided by the ultimate tribunal of appeal, the House of Lords. Whilst, therefore, "*Grammatici certant et adhuc sub judice lis est*;" it would be, indeed, indecorous or rash, to lay down that as a rule of evidence, deducible from modern practice, which might in a few weeks be overturned. But as the proceedings in error in a case in which the question was fairly raised have been dropped, and the practice of *cross-examination* has continued as before,\* we consider the question to be tacitly decided in favour of a free enquiry into the character of the witness from himself; unless so far as may endanger his being convicted of a crime, or lead to such minute discussion of particulars extraneous to the cause, as would impertinently protract the trial without utility to the parties; which we may venture to predict will never happen from the leaders of the English bar.

Considered, therefore, as a theoretical question, rather for the sake of the liberal discussion of principles, than as questioning the decisions of the courts, or anticipating their probable event, we cannot help expressing our satisfaction with the fate of it.

We consider the whole theory of evidence and the practice of examination to be fixed, except in a few unessen-

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\* In the course of the trial of *Despard* and others, questions falling within this rule were suffered to be put to the witnesses for the Crown, without any interference from the bench. So at Guildhall, in a case of bribery; one *Atkinson* was asked many questions tending to discredit himself. He had stood in the pillory for perjury,

tial points, on a basis beyond the reach of merely positive laws. Its foundation is placed in the nature of the human understanding; its rules are those first principles of reasoning which determine the natural way to force opinion and belief upon the judgment. Settle what points of fact make up the issue to be found, admit that *virâ voce* testimony is to be received; determine the essential requisites to establish the validity of certain instruments and public documents; and then nearly all the English Law of Evidence will be found rather to be deducible as a plain consequence of natural reason, than as a matter of positive institution. Hence it is that the legislature has left it to the courts to lay down their own rules upon the subject; which therefore derive their authority from practice,—the best evidence of their propriety and foundation in the nature of things,—and suffer change but rarely, as new light breaks in upon the mind, or as a new institution of things introduces new requisites in proof. Accordingly we find that the most essential or most remarkable changes in the rules of evidence, or the management of *virâ voce* testimony, as in the instance of examining witnesses for the defendant upon oath in criminal cases, which was indeed, by act of parliament,\* have followed the improvements of our constitution; which have introduced or encouraged liberality in the conducting of trials; and, in the Judges, candour and favour towards the subject. Hence also it is, that we find Lord Mansfield expressing perfect disregard for the decisions of some Judges in former times upon points of evidence. Witness the memorable saying—“*We do not sit here to take our rules of evidence from Siderfin and Keble;*” and the many cases which he himself decided solely upon first principles, by drawing more plainly the distinction between *competency* and *credibility*, enlarging the bounds of one and narrowing the other, in opposition to direct authorities. If therefore, the practice of the better part of the last century is found to be in favour of the more enlarged rules of cross-examination, we cannot help thinking that it will require much more than the authority of Lord Chief Justice Treby, delivered in an *obiter* opinion upon the trial of Peter Cook † for High Treason, and altogether not remarkable for its liberality towards a prisoner, to overturn a practice which may be considered at the latest, if we admit Mr. Peake’s inference, as growing up under Lord

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\* 1 Anne, c. 9.

† He was concerned with the unfortunate Sir John Fenwicke.

*Hardwicke*, and countenanced equally by the urbanity and honourable feelings of a *Mansfield*, and the plain, religious, and warm morality of a *Kenyon*; neither of whom were capable of encouraging it, beyond what justice required, to the unnecessary confusion and wanton irritation of witnesses of decent character.\* We are convinced therefore, that if it is ever finally overturned, it will not be upon the weight of authorities, but upon a conviction of its necessity, founded upon a better understanding of first principles, of the convenience of trial, and the utility of moderating cross-examination; and *this* derived from a view of the trial by jury, not such as it was in former times in cases of *high treason*, even at the period of the *Revolution*, but improved as it is in actual practice at the present day.

Whether such a change is actually requisite is a question upon which it hardly becomes us to speak with equal confidence; since it has excited doubts amongst high legal authorities of the present day; but until we have better means of judgment, we shall continue to think, for our own parts, that we have not hitherto been treading the paths of error with blind guides; considering the high characters of those who have filled the seats of justice for the last fifty years: and valuing as we do, beyond all price, the Englishman's proud privilege of a free Trial by Jury, we should be sorry to see it stripped of those aids which it has hitherto possessed for the eliciting of truth, the sifting and bolting, as it were, of evidence, and putting to the strictest and most certain tests the real credibility of witnesses.

We therefore subscribe to all the arguments which Mr. *Peake* has so clearly stated in favour of free examination, while we cannot but acknowledge, to a certain degree, the inconveniences which are urged on the other side of the

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\* It is very remarkable, that in all our Digests of Evidence, this case, and the principle deduced from it, are both omitted. *Viner* in his title *Evidence*, which is the whole of the 12th volume, (Y 2) *Demeanor of the Counsel as to Witnesses*, states—“In examining a witness, counsel cannot question his *whole life*, as that he is a *whore master*, &c.; but if he has done such a notorious fact which is an exception against him, they then may except against him. *March*. 83. pl. 136. *Pasch*. 17. *Car. Anon.*” He then lays down the general principle thus: “One shall not ask a witness a *question*, the affirmative answer to which may draw him into a crime.” *L.P.R.* 555.—*Bacon*, *Gilbert*, *Comyns*, and the rest, carry the rule no further. But *Viner*, under the same title (*M. 2*) says, “Of examining a witness on a *voire dire*, or as to his character, *Vide Wood's Inst.* 10.0.

question. Whatever may be the feelings of him whose character stands self-impeached in a court of justice, we consider it as a necessary evil, which must be endured by the individual for the general interests of public justice, and for the protection of the lives and properties, the defence of the honour and character, of all his fellow-subjects. We should find it hard indeed to distinguish between the real injury done to an equivocal character by self-confession, and that disgrace which is to attach upon him whose credit is shaken or repudiated by the testimony of others.—The distinction, if any, weighs in favour of him, who, by acknowledging his own faults, gives some hope of amendment, some shew at least of veracity. But, as the means of abashing and confounding impudence, of breaking through the machinations of design and artifice, of disconcerting the varnished tale of fraud, and detecting perjury, free cross-examination is an instrument, in the hands of a skilful advocate, of which he cannot be deprived without taking from the litigant parties that which they have long considered as one of their best safeguards for the protection of their innocence and the defence of their rights. To examine, to weigh well, and finally to determine, the different degrees of *credibility*, is the peculiar office, the indispensable duty, of a jury, to which the knowledge of the character of witnesses is necessary and essential; and the best, at least the readiest, if not the only true means of knowing that character, and trying the credibility of the witness, is by inquiry of himself, and if that fails, by the examination of others. Cross-examination as to character is indeed useful and necessary, in a two-fold view; first, as the means of disconcerting the witness and wresting the truth from him; and next, as it affords some means of judging of his general veracity. In admitting character to be impeached only in general terms, by the testimony of others, one of these objects (and certainly not the least important) is entirely lost. We hear the tale of the witness; we suppose him a man of ordinary veracity; and it steals imperceptibly upon our belief: and it is not till some impression is made upon our minds; that some one is called up to say, that, from his character, he would not believe him upon his oath. He determines for the jury, and all the previous testimony is instantly to be expunged from the memory. But absolute *incredibility*, in all cases, can be attributed to no man, and is certainly to be attached to no witness who is *competent* to be received at all in a court of justice. Incredibility, perhaps, in strictness, belongs to things, and is to be collected from their moral improbability, their inconsistency with other facts; and as it affects the

mind of juries, it results from the deficiency of proof arising from the doubtful nature of the circumstances, and the *doubtful* and bad character of the witness by whom they are supported. Whether a man is to be believed upon his oath, is therefore a question to be decided solely by the jury upon the particular fact, and upon considering his whole testimony and demeanour; but the question generally put to witnesses to impeach character, supposes rather that it is an incapacity which he carries with him in all circumstances of his life, to be affixed to a man by dry general evidence, depriving him of all credit at all times, and which ought, therefore, like absolute incompetency, whether from interest in the cause, or conviction of an infamous crime, to be an objection *in limine*; or else, if given afterwards, it implies to a certain degree, taken to the extent of its literal meaning, the assuming of that office which belongs only to the jury, and determining the credit to be given to him in a particular case. Cross-examination as to character, indeed, seems necessarily to imply some enquiry into particular facts, which must tend to disgrace or discredit the witness; whilst, if that is to be done by the loose general testimony of others without some enquiry into particulars, which it would be certainly very inconvenient to make except from the witness himself, we cannot help feeling that an injury is done to the witness by permitting conjecture to range through the whole catalogue of crimes and vices, rather than suffer the true sum of his offence to be made known. And were this in all cases to be adopted, not in order to supply the want of confession upon a cross-examination, but as the sole evidence of character, not only would the expence of trials be considerably increased by the additional number of witnesses, but either the effect of such evidence would be rendered almost nugatory, by admitting slight evidence in general, such as that the witness is of bad character, loose behaviour, and to be believed with great caution; which would at last have little more effect upon a testimony given under no apprehension from the terrors of cross-examination, than those excellently good characters, which the worst thieves find means to procure at the foot of the gallows; or, if a strict rule were adopted, few would be found with courage to screw up their consciences to swear a man wholly unworthy of credit, and many a notorious rogue would obtain full credit in a court of justice, who would be known for a liar by all his neighbourhood. Besides, it is extremely difficult to produce testimony, either to general character or particular facts of infamous conduct, and most difficult, or rather impossible, where most necessary; as where persons wholly unknown are produced as

witnesses to a transaction in which they had really no concern, and where the adverse party must be wholly surprized by their testimony. This indeed, it is urged, may in civil cases be helped by a new trial, but the difficulty even of tracing every low miscreant to his haunts of infamy, the additional expence to the parties, and the extreme difficulty of deciding exactly what was the weight of the other testimony, or indeed how much the mere circumstance of character might have taken from the credit of the witness, would render this a very precarious, and by no means satisfactory remedy; and either the applications for new trials on this ground would be multiplied beyond all calculation, or such strict rules must be adopted as would probably operate to their general if not total exclusion. In cases of felony, however, even this remedy fails, since it is a thing wholly unprecedented to apply for a new trial; and where the life of the party is at stake, although it is most desirable that he should have every assistance in establishing his innocence, yet to admit of new trials would be almost to overturn the whole system of justice.

We can pursue this enquiry no farther at present. In the course of it we have endeavoured to point out chiefly the difficulties which occur to prevent that which we conceive to be an unnecessary and impolitic alteration of the law of evidence; and we must conclude with saying, that we fear it would greatly diminish the efficacy of trial by jury; and if it did not wholly destroy, would tend considerably to lessen the true distinction which ought ever to subsist between the character of witnesses, and make the verdict depend not upon their weight but their numbers. But to reduce all witnesses to one level is the worst of equality; and as inconsistent with the real nature of things, with the ends of justice, and the purposes of *public* trial, as equality of rank and fortune in political institutions, or equality of mental and corporeal endowments, in the natural constitution of man. An equality which can only be produced by exalting the bad upon the abasement of the good; by confounding the honour and independence of virtuous integrity in one undistinguishable croud, with the meanness of fraud and artifice; not only to spare the transient blushes of ingenuous shame from weak and faltering virtue or repentant error, but we fear also to give unmerited security to bold and hardened infamy.

We therefore think it would be more safe to continue the present practice; because all the inconveniences which, in the pursuit of a public advantage, it occasions to a few individuals, may be remedied by a gentle restraint upon the examining counsel; which the Judge will always know how to



exercise with discretion. Finally, in order to try causes with effect by *vivâ voce* testimony, we think it indispensably necessary to try, first, the credit of the witnesses, by their own conduct and their own confessions.\*

\* That this is not a practice of novel invention, but founded in wisdom and utility will appear, at least as far as the sanction of a Roman lawyer and elegant classic can make it appear, from the following passage in *Quintilian*\* ; who, amongst other useful directions which he gives to the young advocate, well deserving the attention of all students, observes, "*Extra causam quoque multa quæ prosint, rogari solent, de vita testium aliorum, de sua quisque, si turpitudine, si humilitas, si amicitia accusatoris, si inimicitia cum reo ; in quibus aut dicant aliquid, quod prosit, aut in mendacio vel cupiditate laedendiprehendantur.*"

\* *De institutione oratoria.* Lib. v. cap. vii. Testium natura cognoscenda.

## LEGAL BIOGRAPHY.

### Nº. II.

*The Right Honourable Sir JOHN HOLT, Knight, Lord Chief Justice of the Court of King's Bench.*

**SIR John Holt** was the eldest son of *Sir Thomas Holt*, knight, serjeant at law, in the reign of king *Charles II.*, by *Susan* his wife, daughter of *John Peacock*, of Chawley, near Comnore, in the county of Berks. He was born on the 30th of December, 1642, 17 *Charles I.* at Thame, in Oxfordshire, and educated in Abingdon school, his father being then recorder of that town. He was afterwards entered as a gentleman commoner of \* *Oriel College*, Oxford, under the tuition of *Mr. Francis Barry*, and in the year 1658, 10 *Charles II.*, before he had taken any degree, was enrolled as a student of *Gray's Inn* †. He there applied himself with exemplary industry to the study of the common

\* *Wood's Athenæ Oxoniensis*, vol. ii. c. 966.

† *Lord Raymond's Rep.* p. 604.

law, and was called by that society to the bar as soon as he had kept his terms.

That Mr. *Holt* soon acquired considerable eminence at the bar is evident, for on the impeachment of the earl of *Danby*, in the year 1678, by the House of Commons, he was appointed by the lords one of the prisoner's counsel with Mr. Serjeant *Raymond*, (father of the Lord Chief Justice), and Mr. *Saunders* (afterwards Chief Justice of the King's Bench).

On the 13th of February, 1685, 2d *James II.*, Mr. *Holt* was made recorder of London\* by letters patent, in the room of sir *Thomas Jenner*, appointed one of the barons of the exchequer; and he at the same time received the honour of knighthood.

After discharging the duties of this office with acknowledged ability and general applause for about a year and a half, he was removed for not giving his consent to the abolition of the test laws. On this transaction it has been justly observed †, that "though king *James II.* had no other wars but against the laws and constitutions of the nation, yet he would have the act, ‡ which makes it felony without benefit of clergy, for any soldier taking pay in the king's service in his wars beyond seas, and upon sea, or in Scotland to desert his officer, to extend to this army thus raised by king *James II.*, himself, in time of peace, to enslave the nation; and because the recorder of London, Sir *John Holt*, would not expound this law to the king's design, he was put out of his place; and so was Sir *Edward Herbert* § from being Chief Justice of the King's Bench, to make room for Sir *Robert Wright* to hang a poor soldier upon this statute, and afterwards, indeed, this statute did the work without any further dispute."

\* *Wood's Ath. Oxon.* vol. ii. c. 964. *Show. Rep.* vol. ii. p. 468.

† *Coke's Detection of the Court and State of England*, vol. ii. lib. 5. p. 245.

‡ 2d and 3d *Edward VI.* cap. 2. sec. 6, which was repealed as to the felony by stat. 1 *Mary*, sess. 1. cap. 1. and revived by stat. 4 and 5 *Phil.* and *Mary*, cap. 3. sec. 9.

§ When king *James* asked Sir *James Herbert* to vote for the repeal of the Test, he answered, he could not do it in honour or conscience; the king said, he knew he was a man of honour, but the rest of his life did not look like that of a man that had great regard for conscience, (for he was, indeed, abandoned to luxury and vice). *Hertert* boldly replied, that he had his faults, but they were such, that other people, who talked more of conscience, were guilty of the like.

A short time previous to Sir *John Holt*'s falling into this apparent disgrace with the king, for so honestly discharging his duty, he was called to the degree of serjeant at law,\* his writ bearing date on the 22d of April, 3d *James II.* 1686.

In the year 1688, being chosen a member || in the convention parliament, called by the prince of *Orange*, to settle the distracted state of the nation, King *James* having withdrawn into *France*, he was appointed to be one of the managers for the commons, at the conferences with those appointed by the Lords, respecting the abdication and vacancy of the throne; and this solemn occasion afforded him every opportunity for displaying his great abilities, and profound knowledge of the constitution and laws of his country. To the manner in which he distinguished himself on this occasion, may probably in a great measure be attributed his speedy advancement: for as soon as the government was settled, and king *William* and queen *Mary* firmly seated upon the throne, he was appointed to the high post of Lord Chief Justice of the King's Bench †; Sir *William Dolben*, Sir *William Gregory*, and *Giles Eyre*, Esq. being at the same time constituted the three other Judges of that court.

On the 7th of *May*, 1689, Sir *John Holt* was chosen one of the governors of the Charter-house, in the room of the late Lord Chancellor *Jefferies*, and on the 25th of ‡ *August*, in the same year, he was made a member of the privy counsel, and sworn at Hampton-court.

The reversion of the place of chief clerk for enrolling pleas in the court of King's Bench, having been granted by king *Charles* to the duke of *Grafton*, a vacancy which happened soon after the duke's decease produced a contest at law §, between the Chief Justice and the young duke of *Grafton*,

\* Mod. Rep. 3d vol. p. 100. The motto on his rings was *Deus, Rex, Lex*.

|| *Boyer's Remarkables* of the year 1710, p. 407.

† 4th May, 1689, 1 *William* and *Mary*. Lord *Raymond* Rep. vol. ii. p. 1309. Appendix to *Chronica Juridicialia*, p. 3. *Wood's Athenæ Oxon.* vol. ii. c. 964.—Bishop *Burnet* says, that "though he was a young man for so high a post, yet he maintained it all his time, with an high reputation for capacity, integrity, courage, and great dispatch; so that since the Lord Chief Justice *Hale's* time, that bench had not been so well filled as it was by him."

‡ *Boyer's Remarkables* for 1710. *Wood* says he was made a Member of the Privy Council, on the 26th of September, 1682; but this must be a mistake.

§ *Shower's Parl. Cases*, p. 111.

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respecting the right of nomination. The matter was at length accommodated by the interposition of the king himself, who, although the Lord Chief Justice might have enforced his right; stipulated with him to make a handsome allowance out of the profits to an orphan, who had lost his father in the service of the country. To this his lordship consented, and immediately appointed his brother, Mr. *Rowland Hunt*, who enjoyed the place with his death.

On the 20th of June, in Trinity term, 1694, (6 *William and Mary*.) Lord Chief Justice *Holt* delivered his admirable judgment in Lord *Banbury's* case\*, upon the right of that nobleman to be tried by his peers, for the murder of Captain *Lawson*, who had married his sister. Mr. Serjeant *Skinner*, speaking of this judgment, says, that it was more explicit than that of the other Judges; and delivered with greater reason, courage, and authority†. Upon one of the objections, that the judgment was said to be given *secundum legem parliamenti*, his lordship said, that "he did not know any reason for this objection which the king's counsel had inserted, if it was not to frighten the Judges. But that, he said he did not regard; for though he had all respect and deference for that honourable body, yet he sat there to administer justice, according to the law of the land, and according to his oath; and that he ought not to regard any thing but the discharge of his duty. As to the law of parliament he did not know of any such law, and every law which binds the subjects of this realm, ought either to be the common law and usage of the realm, or an act of parliament; *nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, aut per legem terre*; but if there were any such law and custom of parliament, (the which Mr. Attorney said, was *inter arcana imperii*, which is a strange notion of a law, though it may be good in politics; and for which the lords would not thank him, when they considered that the law which governs the inheritance of their dignity is *inter-arcana*) it ought either to be recognized by act of parliament, and there is no such act; or it ought to be by custom, and no more is there any such custom." With the concurrence of the whole court, judgment was given for the defendant.

The bold and manly manner in which the Lord Chief Justice expressed his opinion, upon some nice and questionable points of privilege, arising in this case, produced con-

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\* It is reported in Lord *Raymond*, *Salkeld*, *Carthew*, *Comberbatch*, *Skinner*, and the Modern Reports.

† *Skinner's Rep.* p. 517.

siderable ferment in the upper house; and in Hilary term, 1697, he was summoned by the peers to give his reasons for his judgment. A committee, of which the Earl of *Rochester* was chairman, being appointed to hear and report them to the house. But with that firmness which peculiarly characterized him, his lordship refused to give them in so extrajudicial a manner. "If," said he, "the record were removed before the peers, by writ of error, so that it comes judicially before them, I will give my reasons very willingly; but if I give them in this case, it will be of very prejudicial consequence to all Judges hereafter, in all cases." This answer so offended some of the lords, that they pressed for his committal to the tower; but his decision and firmness disappointed all their efforts.

This hostile and illegal attempt on the part of the House of Lords, to intimidate the Chief Justice, produced no effect upon him, as an instance which occurred a few years afterwards proves. The bishop of St. David's applied to the King's Bench for a prohibition, which the Chief Justice refused. This produced a petition to Lord Chancellor *Somers* for a writ of error, upon this denial of the prohibition. The writ being granted, and the whole record brought by the Chief Justice into Parliament, the lords upon hearing his reasons for the opinions he had given, concurred with him that a writ of error could not lie in this case. But his Lordship told Lord Chief Justice *Raymond*\*, *that even if the lords had been of opinion that the prohibition ought to have been granted, that he never would have granted it.*

The next important case which occupied the attention of Lord Chief Justice *Holt*, was one, well-known by the name of the *Banker's Case*; and it derives part of its great interest from producing a difference of opinion between the Chief Justice and Lord Chancellor *Somers*, whose argument in the Exchequer Chamber, on the 23d of June, 1696, is equally admired for the great elegance of the style and method, and for its comprehension and learning. It is not only esteemed one of the finest performances of the law, but has satisfied very able lawyers of the legality of his judgment†.

King *Charles II.* had mortgaged the whole revenue of the crown to different bankers, for an immense debt, and paid

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\* Lord *Raymond*, vol. i. p. 545.

† It is said that the search of records and precedents to enable Lord *Somers* to give his judgment in this case, cost him 700l.

them interest at the rate of 8 per cent. while those who entrusted their property to the bankers, to enable the latter to make these loans to the crown, received only 6 per cent. In the year 1672, the Exchequer payments were stopped, and multitudes ruined. About five years after, his Majesty granted letters patent to all persons concerned, for the payment of the annual pension of 6 per cent. out of the hereditary excise given by parliament, instead of the wards and liveries, upon the principal sums due to them, on delivering up their securities, and accepting proportionable assignments in satisfaction of their debts. The payments were made regularly by virtue of these letters patent, until Lady-day, 1683, after which they were stopped during the remainder of King *Charles's* reign, the whole reign of King *James II.* and for three quarters of a year after the revolution.

In Hilary term, 1 *William & Mary*, 1689, a petition was presented by *Joseph Hornby*, to the treasurer and barons of the Exchequer, for the allowance of the letters patent. The attorney-general demurred generally, and the court gave judgment for the petitioner *Hornby*; upon which the attorney general brought a writ of error in the exchequer chamber, where Lord Chief Justice *Holt*, delivered his opinion in affirmance of judgment, in Trinity term, 1695\*.

The first point in question in the case was—Whether the grant under the letters patent was good?—Upon that Lord Chief Justice *Holt* argued in the affirmative, being of opinion that the king was seized of an estate in fee of this revenue, to which a power of alienation was incident.

The second point was—Whether a proper course of proceeding had been adopted by the patentees? Upon this point also, the Lord Chief Justice held, that the petitioners had taken a proper and legal remedy, and that the judgment of the barons in favour of the petitioners should be affirmed.

Lord Chief Justice *Treby* differed in opinion with the other Judges, and Lord *Somers* concurring, the judgment was reversed. The ground upon which the latter delivered the elaborate judgment which has been already noticed, was that the patentees had not taken a proper remedy by petition to the barons, who have no power or controul over the king's treasury, and that their only remedy was by petition to the king himself.

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\* Mod. Rep. vol. v. p. 29, 30, 53.

This decision occasioned much clamour from the extensive and ruinous consequences to the persons concerned, but an act which was soon afterwards passed, appeased their dissatisfaction. By the statute 12 & 13 Wm. III. c. 12, the revenue of the excise was applied as a security for 820,000*l.* and a weekly payment of 3,700*l.* to the civil list; subject at the same time to an annual payment of 3 per cent. on the whole principal due to the bankers, from the 26th of December, 1705, which principal was made redeemable on payment of a moiety.

Upon the resignation of Lord Somers, on Saturday, the 27th of April, 1700, after the seal had remained for some time undisposed of, King William pressed Lord Chief Justice Holt to accept of it\*; but he steadily refused, and at last told his majesty, “*That he never had but one Chancery cause in his life, which he lost, and consequently could not think himself qualified for so great a trust*†. It being then term time, and much inconvenience arising from the vacancy, a commission was issued, in which Sir John Holt was named the first commissioner, Sir Thomas Trevor, master of the Rolls, Sir George Treby, Chief Justice of the Common Pleas, and Sir Edward Ward, Lord Chief Baron of the Exchequer, being the other commissioners. The commission, however, was but of short duration, the great seal being in a few days afterwards delivered to Sir Nathan Wright.

Upon queen Ann’s accession to the throne, notwithstanding the act of parliament‡, which had been passed in the preceding reign, empowering all persons in offices of trust, to act therein after the devise of the crown as before, for six months, unless displaced by the successor, and particularly in the office of Chief Justice; yet Lord Chief Justice Holt held his patent to be determined by that event, and therefore declined executing the duties of his office; upon which the queen in council gave immediate orders to issue a new writ for him§.

It would be an endless task to enumerate the various

\* Prior, in a letter to the Earl of Manchester, dated at Hampton-court, 2d May, 1700, says, “My Lord Chief Justice Holt, having been here to-day, and with the king in private, has given people occasion to say, that he has refused the seals: if it be so or not, I cannot say, but as yet the seals are not disposed of.”

† Boyer’s history of queen Anne, p. 52.

‡ Stat. 12 & 13 William III. c. 2.

§ Lord Raymond Rep. vol. ii. p. 747. Fortescue, Rep. 389.

judgments delivered by Lord Chief Justice *Holt*, upon questions of great public importance, and in which his great learning and talents were particularly displayed; for he was never satisfied with merely delivering an opinion, but laboured to convince all who heard him.—Many of his luminous decisions contain a complete investigation of the law, from the earliest periods, and this observation particularly applies to his judgment in the case of *Coggs and Bernard*†, in which he illustrated with great ability the important subject of the law of bailments.

In the year 1708, Lord Chief Justice *Holt* published a volume of Reports of Cases in Pleas of the Crown, *tempore Charles the Second*, with instructions for justices of the peace and others, collected by Sir *John Keyling*, Knt.\*

† Lord *Raym.* Rep. vol. ii. p. 909.

\* Sir *John Keyling* was of the Inner Temple, and called to the degree of a Serjeant at Law in Michaelmas Term, 13 *Charles II.* 1661; on which occasion he gave rings with this singular inscription—a *Dest CaroLVs MagnVs*: the large letters (MDCLVV) made the year of the Restoration, 1660. He was made one of the Judges of the King's Bench the 18th of June, 1663, in the room of Sir *Thomas Mallet*, who retired from town to his country seat, having first petitioned the King to dispense with his attendance, by reason of his great age, which the King granted, continuing to him his patent and salary; so there were five Judges, although but four attended. Sir *John Keyling* was constituted Chief Justice on the 21st of November, 1665, 17 *Car. II.*—In Michaelmas term, 1669, 21 *Charles 2d*, Mr. Serjeant *Powys* coming to the King's Bench bar, who was the junior of seventeen who had been made a day or two before in that term, the Lord Chief Justice told him that he had something to say to him, viz. "That the rings which he and the rest of the serjeants had given, weighed but eighteen shillings a-piece; whereas *Fortescue* in his book, *De Laudibus Legum Angliæ*, (cap. 50. p. 114.) says that the rings given to the Chief Justices ought to weigh twenty shillings a-piece; and that he spake not this expecting a recompense, but that it might not be drawn into a precedent, and that the young gentlemen there might take notice of it."

*Burnet*, in the History of His Own Times, (p. 184,) says that Chief Justice *Keyling* prepared the Act of Uniformity. (Stat. 13 and 14. *Charles II.* cap. 4.)

The hasty temper of the Chief Justice seems to have subjected him to some unpleasant occurrences; for in the year 1666 he was questioned in parliament for over-awing and putting a restraint upon juries; when the house came to several resolutions upon his case, and ordered him to be prosecuted; but the house being prorogued, and he himself not long after dying in discontent, it does



late Lord Chief Justice of the King's Bench, from the original MS. under his own hand; to which he added several notes, and also three modern cases, viz. *Armstrong* and

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not appear that any further proceedings took place. (*Triumphs of Justice*, fol. London, 1681. p. 29. 36.)

*Siderfin* says the complaint was for a misdemeanor done in his office, as fining juries, &c.; that there was an inquiry made into the matter, and the Chief Justice appeared in person before the committee, and also in the House of Commons, and afterwards he was discharged. (*Rep.* p. 338. pl. 1.)

He was also involved in a very unpleasant and, in the end, humiliating affair with *Denzel Lord Holles*, being obliged to make that nobleman satisfaction for an affront at the trial of certain French gentlemen, for a robbery, in the Court of King's Bench, in Easter term, 1670. 22 *Charles II.*—The affront was, that when Lord *Holles* attempted to speak to the characters of the Frenchmen, the Chief Justice stopped him, saying, that he must not interrupt the court; and Lord *Holles* replying, that it was neither to interrupt the court, nor to do them any wrong, to inform them as much as possible of all passages: upon which the Lord Chief Justice said, very angrily—*My Lord, you wrong not the court, but you wrong yourself, and it is not the first time you have been observed to appear too much for strangers.*—"So," says Lord *Holles*, "I was snubbed and set down again; but I must say it was language I had not been used to, nor I think any of my condition, that had the honour to serve the King in the quality I do, of a privy counsellor."—The Lord Chief Justice also, upon *Walrond's* evidence, declared, (looking fully at Lord *Holles*, whence the whole court understood it to be meant of him,) *that there had been some foul doings.*—Upon these indignities, Lord *Holles* petitioned the House of Lords, who thereupon made an order, "that the Lord *Holles* having produced his witnesses, after the hearing of which, the Lord Chief Justice made his defence, and denied that he intended any thing against the Lord *Holles* when he spoke those words at the trial; to which defence the Lord *Holles* made a short reply, and then voluntarily withdrew himself, and the Lord Chief Justice withdrew himself also. Upon which the house took the whole into serious consideration, and ordered that the Lord Chief Justice should be called to his place as a Judge; and openly (in the presence of Lord *Holles*) the Lord Keeper should let him know that the house is not satisfied with his carriage towards Lord *Holles* in this business, and therefore has ordered that he should make acknowledgment, to be read by the clerk, that he did not mean it of the Lord *Holles* when he spoke those words, and that he is sorry that by his behaviour or expressions he gave any occasion to interpret it otherwise, and asks the pardon of the house and the Lord *Holles.*"—Then the Lord Chief Justice being called to his place, (and the Lord *Holles* being also

*Lisle, the King and Plummer, and the Queen and Moggridge.*

Lord Chief Justice *Holt* sate in court for the last time on the 8th of February, 1709, and departed this life on the 5th day of March, 1709, about three o'clock in the afternoon, at his house in Bedford-row, after a long lingering illness, in the 68th year of his age. He married *Anne*, daughter of Sir *John Cropley*, of Clerkenwell, in the county of Middlesex, baronet, whom he left without issue. His remains were interred in the parish church of Redgrave, in the county of Suffolk, under a most sumptuous marble monument, upon which there is a figure of his Lordship in his robes of Chief Justice, sitting in a chair. Underneath is the following inscription :

M.S.  
D. JOHANNIS HOLT, Equitis Aur.  
Totius Angliæ, in Banco Regio,  
Per xxi. annos continuos,  
CAPITALIS JUSTICIARII,  
Gulielmo Regi, Annæque Reginæ  
Consilarii perpetui,  
Libertatis, ac Legum Anglicarum  
ASSERTORIS, Vindicis, Custodis,  
Vigilis, acris et intrepidi;  
Rolandus frater unicus et Hæres,  
Optime de se merito,  
Posuit.

Die Martii v<sup>to</sup>. MDCCIX. sublatu est ex oculis nostris.  
Natus xxx Decembris—Anno MDCXLII.

Lord Chief Justice *Holt* was one of the most able and upright Judges that ever presided in a court of justice. He was a perfect master of the common law, and applied himself with great assiduity to the functions of his important office. He possessed an uncommon clearness of understanding and great solidity of judgment; and such was his integrity and firmness of mind, that he could never be induced to swerve from the strictest lines of law and justice. He was remarkably strenuous in nobly asserting and as vigorously supporting the rights and liberties of the subject,

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present,) the Lord Keeper performed the directions of the house, and the Lord Chief Justice read the acknowledgment. (*Journals of the House, 1671.*)--The Chief Justice died in Easter term, 23 *Charles II.*

to which he paid the greatest regard, and would not suffer any reflections, tending to depreciate them, to pass uncensured.

There was a remarkable clearness and perspicuity of ideas in his definitions; and a distinct arrangement of them in the analysis of his arguments, by which the real and natural difference of things was made most perceptible and obvious. He seldom erred in his conclusions; his arguments were instructive and convincing; and his integrity would not suffer him to deviate from truth and justice, to gratify persons of the most exalted rank, not even in compliance to the will of his Prince or either House of Parliament.

He had a just sense of the extreme danger of calling in the military power, under the pretence of assisting the civil magistrate in the execution of the laws; and he would on no occasion countenance any thing of the kind. Whilst he held the office of Chief Justice, a riot happened in Holborn, occasioned by a practice, in which many persons were then engaged, of decoying young people of both sexes to the Plantations. The persons decoyed were kept prisoners in a house in that street until an opportunity occurred of shipping them off, which being discovered, the enraged populace were going to pull down the house. Notice of this being sent to Whitehall, a party of the guards were commanded to march to the place, but they first sent an officer to Lord Chief Justice *Holt*, to acquaint him with the design, and to desire him to send some of his people to attend the soldiers, in order to give more weight to their interference. The officer having delivered his message, the Chief Justice said to him, "Suppose the populace should not disperse at your appearance, what are you to do then?" "Sir," answered the officer, "we have orders to fire upon them." "Have you, Sir," replied his Lordship: "then take notice of what I say: if there be one man killed, and you are tried before me, I will take care that you, and every soldier of your party, shall be hanged! Sir," added he, "go back to those who sent you, and acquaint them, that no officer of mine shall attend soldiers; and let them know at the same time, that the laws of the kingdom are not to be executed by the sword: these matters belong to the civil power, and you have nothing to do with them." Upon this the Lord Chief Justice ordered his tipstaves, with a few constables, to attend him, and went himself in person to the place where the tumult was; expostulated with the mob, and assured them that justice should be done upon the persons who were the objects of their indignation: upon which they all quietly dispersed.

We shall conclude with a well-merited eulogium upon the integrity and uprightness of this great Judge, which Sir *Richard Steele* has given us in the 14th *Tatler*, under the character of VERUS.

"It would become all men, as well as me, to lay before them the noble character of VERUS, the magistrate, who always sate in triumph over, and in contempt of, Vice. He never searched after it, nor spared it when it came before him: at the same time he could see through the hypocrisy and disguise of those who have no pretence to virtue themselves but by severity to the vicious. This same VERUS was, in times long past, Chief Justice (as we call it amongst us) in *Felicia*. He was a man of profound knowledge of the laws of his country, and as just an observer of them in his own person. He considered justice as a cardinal virtue; not as a trade for maintenance. Wherever he was Judge, he never forgot that he was also counsel. The criminal before him was always sure he stood before his country, and, in a sort, the parent of it. The prisoner knew, that though his spirit was broken with guilt, and incapable of language to defend itself, all would be gathered from him which could conduce to his safety; and that the Judge would wrest no law to destroy him, nor conceal any that could save him."

## BANKRUPTS,

*Declared in the London Gazette, from March 3d to  
April 28th, inclusive.*

[The Solicitors' Names, and Dates of the Gazette, are preceded  
with a Crotchet.]

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- Alderson Christopher, of Beccles, Suffolk, grocer. [Dawes, Angel court, Throgmorton street. March 6.
- Allen John, the elder, of Jewry street, victualler. [Lewis, New square, Minorities. March 10.
- Acklam William, of Beverley, tanner. [Hall, Beverley; and Lowndes and Lambert, Red lion square. April 24.
- Beetham Wm. Simon, of Furnival's inn court, Holborn, printer. [Beetham, Bouverie street, Fleet street.
- Ball Thomas, of Bristol, brandy merchant. [Mellin, Bristol.
- Beck John, of Workington, Cumberland, wine merchant. [Thompson, Workington; and Bacon, Southampton street, Covent garden. March 3.
- Bulgins W., of Bristol, printer. [Hall and Jarmin, Bristol; and Shaw, Bridge-street, Blackfriars. March 3.
- Black George, and Alex. Stephen, of Bush lane, London, dealers in coal. [Harriman, Wine office court, Fleet street. March 3.
- Brears Robert, late of Middleton, Lancaster, cotton manufacturer. [Clarkson, Rochdale, Lancaster; and Hurd, Inner Temple. April 17.
- Berry W. of Oakham, Rutland, apothecary. [Latham, Melton Mowbray, Leicestershire; and Rigge and Merrifield, Carey street, London. March 6.
- Bowers John, of Halesworth, Suffolk, Shopkeeper. [Kingsbury, Bungay; and Tarrant and Moule, Chancery-lane. March 10.
- Battison Richard, and Samuel Wade, of Manchester, merchants. [Barrett, Manchester; and Messrs. Willis, Warrford court. March 17.
- Bury Wm. the younger, late of Pilton, Devonshire. [Drake, Barnstaple; and Luxmore, Red lion square. [March 17.
- Buckley Wm. Saddleworth, Yorkshire, merchant. [Ainley, Saddleworth; and Batty, Chancery lane. March 31.
- Belfour James, Russell court, Drury lane, shoemaker. [Carpenter and Guy, New inn. April 11.
- Beil Wm. Southampton street, Covent garden, hatter. [Palmer and Tomlinson, Throgmorton street.
- Bradby Joseph, Wilton, Wilts, timber merchants. [Hodding, Salisbury; and Millett and Son, Terrace, Gray's inn lane. April 17.
- Brewer Thomas, Chippenham, Wiltshire, linen draper. [Cook and Tanner, Bristol; and James, Gray's inn. March 31.
- Brooks William, of Bideford, Devon, shopkeeper. [Daniel and Son, Bristol; and Pearson, Temple. April 28.
- Bradley Samuel, of Holborn, victualler. [Hebden, Inner Temple. April 28.
- Beattie William, of St. Paul's church yard, pocket book maker. [Richardson, Monument yard. April 24.
- Cook William, Cannon street road, mariner. [Nind, Great Prescott street, Goodman's fields. April 21.
- Crooke James, of Colne, Lancashire, cotton manufacturer. [Taylor, Manchester; and Ellis, Curator street. March 3.
- Curwen John, late of Lancaster, Lancashire, horse dealer. [Blacklock, Elm court, Temple; and Atkinson Lancaster. March 31.

## *Bankrupts.*

- Collings Thomas, of Crediton, Devon, serge maker. [Terrell, Exeter.
- Carlier John, and William Wilkinson, Stockport, Cheshire, muslin manufacturers. [T. C. and C. Jackson, Walbrook, London; and Dicae, Stockport. March 24.
- Clarkson John, Thomas, and Christopher, of Bedale, Yorkshire, linen manufacturers. [Morton, Bedale; and Dynely and Sons, Gray's inn. April 7.
- Clarke Francis, Rotherhithe street, Rotherhithe, mariner. [Nind, Great Prescott street, Goodman's fields. March 27.
- Chateaufauf Louis, Crutched friars. [Swain and Stephens, Old Jewry. March 31.
- Cook Edward Millburn, John Hallowell, and Thomas Walmsley, North Shields, Northumberland, ship builders. [Atkinson, Chancery lane, London; and Walters and Bainbridge, Newcastle upon Tyne.
- Challenor Thomas, Liverpool, Lancaster, victualler. [Spencer, Liverpool; and Thomas Windle, Bartlett's building's, London. March 31.
- Chadwick Nathaniel, Bolton; Lancashire, innkeeper. [Foulkes, Manchester; and Foulkes, Bury place, Bloomsbury. March 31.
- Cooper Thomas, of Leatherhead, Surrey, corn chandler. [Burt, Epsom. April 28.
- Davis Benjamin, late of Gray's inn, money scrivener. [Fowell, Essex street, Strand. March 3.
- Dunkin John, Red cross street London, rectifier. [Martin, Vintner's hall, Upper Thames street. March 10.
- Draper Richard, Bishopsgate street, London, grocer. [James, Gray's inn place, Gray's inn. March 31.
- Dickenson Thomas, Manchester, builder. [Foulkes, Manchester; and Foulkes, Bury place, Bloomsbury square. April 21.
- Dalton Richard, of Church street, Kensington. [Edwards, Red lion square. April 24.
- Dobson John, of Leeds, merchant. [Speight, Leeds; and Battye, Chancery lane. April 28.
- Edwards William, of New Bond street, goldsmith and jeweller. [Nelson, Maddox street, Manover square.
- Etches James, of Darenty, Northampton, mercer and grocer. [Wainwright, Hare court, Temple. March 13.
- English Sarah, of Charing cross, hosier. [Hodgson, Charles street, St. James's. March 17.
- Evans Henry, of Calne, Wiltshire, clothier. Mereweather, Calne; and Sandys and Co. Crane court, Fleet street. March 17.
- Elliott Wm. of Beverley, York, tanner. [Hall, Beverley; and Lowndes and Lambert, Red lion square. April 24.
- Flack Hamiltio Vancouver, of Manchester, dealer in malt. [Cheshyre and Walker, Manchester. March 24.
- Fowkes John, late of Bush lane, London, wine and liquor merchant. [Vandercom, Bush lane, Cannon street. March 24.
- Fowle John, of Chippenham, Wilts, clothier. [Mereweather Calne.
- Fell Joseph, of Whitby, York, rope maker. [Frost and Rosser, Kirby street, Hatton garden. March 6.
- Fyson Thomas, of Bishopsgate street within, pewterer. [Jones, Lord Mayor's Court-office, Royal Exchange. March 17.
- Fletcher Josiah, of Stockport, Cheshire, silkman. [Wapson, Barlow, and Grosvenor, Austin friars, London. April 7.
- Godfrey Daniel, Moorfields, broker. [Chester, Melina place, Middlesex. March 10.
- Godfrey James, of High street, Shadwell, sloop seller. [Ashfield, High street, Shadwell. April 14.
- Gadsden James, of Bishopsgate street, Cheesemonger. [Beaurain, Union street, Bishopsgate. April 10.
- Graham James, of Piccadilly, watchmaker. [Pinero, Charles street, Cavendish square. April 10.
- Gill George, Charles street, Berkeley square, saddler. [Barton Greenwood, Manchester street, Manchester square. March 24.
- Gordon John, of Peghouse, Gloucester, clothier. [Croom and Newman, Stroud; and Constable, Symonds' inn. April 7.
- Green Charles and Samuel Marland, of Heaton Norris, Lancaster, cotton spinners. [Knight, Manchester; and Ellis, Cursitor street. April 28.

## *Bankrupts.*

- Green William, of Romford, linen draper. [Atkinson, Castle street, Falcon square. April 24.
- Harding Wm. of Mildenhall, Suffolk, shoemaker. [Giles, Great Shire lane, Lincoln's inn. April 10.
- Hart Thomas, of Bristol, merchant. [Easton, Bristol; and Hill, Meredith, and Robins, Gray's inn. April 21.
- Hill, John, of Cateaton street, warehouseman. [Macdougall and Hunter, Lincoln's inn square. April 21.
- Harrison, E. of Easingwoud, York, woollen draper. [Munby, York. April 3.
- Haynes Thomas, of Oundle, Northampton, nursery man. [Bushwell, Northampton.
- Hollen, William, of Shirbeck Quarter, Lincoln, coal merchant. [Tunnard, and Rodgeron, Boston; and Allen and Exley, Furnival's inn. April 17.
- Hesketh George Gaskell, of Manchester, grocer. [Kearsley and Cardwell, Manchester; and Jacksons, Walbrook. March 3.
- Hindley Thomas, and Samuel Cooling, of Manchester, calico manufacturers. [Hewitt, Manchester.
- Hunt W. of Putney, Surrey, grocer. [Luckett, Basinghall street. March 3.
- Hopwood Thomas, of Rochdale, Lancaster, plumber. Lee, Leeds; and Batty, Chancery lane. March 6.
- Harries John Owen, late of Swithen's lane, London, dealer in ale and porter. [Eaton, Birchen lane, Cornhill. April 3.
- Hague Thomas, of Cannon-row, Westminster, money scrivener. [Howard, Henrietta street, Covent garden. March 31.
- Hardies J. of Seaford, Sussex, apothecary. [Rhodes, Cook, and Handley, St. James's walk, Clerkenwell. April 14.
- Harris Robert, of Maidstone, draper. [Clarkson, Essex street, Strand. April 14.
- Hutchinson Wm. of Wakefield, York, hardwareman. [Scholefield, Horbury; and Sykes, and Knowles, Boswell court. April 28.
- Heawood, Elisha, of Manchester, and James Roberts, of Stockport, cotton spinners. [Bullivant, Bernard street, and Baddely, Stockport. April 28.
- Johnson Thomas, of Leicester, carpenter. [Temple, Leicester; and Taylor, Southampton buildings, Chancery lane. March 6.
- Ives Chapman, of Collishall, Norfolk, brewer. [Swain and Stephens, Old Jewry. April 17.
- Johnson Hugh, of Newcastle upon Tyne, carpenter. [Clayton and Brumell, Newcastle upon Tyne; and Clayton and Scott, Lincoln's inn. April 14.
- Jenkinson Richard, Pocklington, York, money scrivener. [Newstead, York; and Crossfield and Moore, Salisbury street, Strand. March 20.
- Jeffries John, of Clapton road, printseller and publisher. [Anthony, Earl street, Blackfriars. March 31.
- Kingsbury Daniel, of Exeter, factor. [Turner, Exeter; and Flashman, Ely place. March 6th.
- King Jeremiah Marshall, of Bristol, dealer and chapman. [Clifford, Bristol; and Tarrant and Moule, Chancery lane. April 21.
- Knight Wm. of Tunbridge wells, Kent, banker. [Jones, Tunbridge; and Blandford and Sweet, Temple. March 10.
- Keeble Henry Ashley, of Peckham, Surrey, surveyor. [Smith, York buildings, Bermondsey. April 28.
- Leeming Thomas, of Preston, Lancashire, John Myers, of Cleckheaton, Yorkshire, and Wm. Chapman, of Preston, worsted manufacturers. [Crassley, Bradford.
- Lloyd Thomas, of Billiter square, merchant. [Kayll, Tower Royal.
- Liptrop John, and Samuel Davy Liptrop, of Whitechapel, distillers. [Druce, Billiter square, Fenchurch street.
- Leonard Charles, West Bromwich, Staffordshire, ironmaster. [Stubbs, Birmingham; and Egerton, Gray's inn square.
- Lawson William, and William Byron, of Lincoln, drapers. [Bland, Racquet court, Fleet street. March 10.
- Lawton James, late of Dubcross, Saddleworth, York, shopkeeper. [Ainley, Delph, Saddleworth; and Batty, Chancery lane. March 10.
- Lee Henry, Shire lane, Temple bar, victualler. [Howard, Jewry street, Aldgate. March 31.

## *Bankrupts.*

- Low Ralph, late of Kinderton, Cheshire, miller. [Beckett, Kinderton; and Huxley, Middle Temple, London. April 3.
- Martin Thomas, Birmingham, and Thomas Nicholls, Stone Stafford. [Simcox, Bull Ring, Birmingham.
- Martindale John, New Bond street, wine merchant. [Dewbery, Conduit street.
- Mee Thomas, Manchester, and Peter Lonn, Eccles, Lancaster, calico manufacturers. [Knight, Manchester; and Ellis, Cursitor street, London. Mar. 30.
- Mathews, Wm., late of Long lane, Southwark, vellum and parchment manufacturer. [Roche, Nicholas lane, Lombard street. [March 3.
- Marriott Thomas, King street, London, wine merchant. [Cockayne and Taylor, Coleman street March 27.
- Mc Cabe Edward, Broad street, Bloomsbury, hat maker. [Fothergill and Savage, Old Broad street. March 3.
- Mansergh Richard, West hall, within Newton, Lancaster, grazier. [Troughton, Preston; and Hurd, Inner Temple. March 10.
- Murray Samuel, Russell court, Drury lane, bookseller. [Cobb, Clement's inn. March 17.
- Millburn Edward Cook, John Hallowell, and Thomas Walmsley, of North Shields, Northumberland, ship builders. [Atkinson, Chancery lane; Walters and Bainbridge, Newcastle-upon-Tyne. March 31.
- Mills Mary, Newington causeway, Surrey, cooper. [Bishop, Wood street, London. April 21.
- Mort Thomas, and John Broadhurst, Manchester, cotton spinners. [Cheshyre and Walker, Manchester; and Ellis, Cursitor street. April 21.
- Maxwell Robert, George street, Minorics, ship broker. [Hall and Bell, Bow lane, Cheapside. April 17.
- Milner John, Morley, Yorkshire, woolstapler. [Nicholson and Upton, Leeds.
- Makin J., Bolton, Lancaster, cotton manufacturer. [Cheshyre and Walker, Manchester. April 14.
- Metcalf Cuthbert, of Kighley, York, money scrivener, and cotton manufacturer. [Blunt, Old Pay Office, Broad street, London; and Mr. de la Fare, Kighley. April 24.
- North William, Dewsbury Moor, York, coverlid manufacturer. [Rylah, Dewsbury; and Sykes and Knowles, Boswell court, London. March 6.
- Nash Isaac, Bristol, cooper. [Morgan, Bristol; and James, Gray's inn square. March 17.
- No Need Bartholomew, Great Sutton street, Clerkenwell, Middlesex, watch case maker. [Robinson, Charterhouse square. March 24.
- Noble James, of Kensington Gravel Pits. [Pratt, Gray's inn square. April 24.
- Newbold John, of Manchester, draper. [Foulkes, Manchester; and Fbulkes, Bury-place, Bloomsbury. March 31.
- Nattrass J. St. John's Chapel, Durham, innkeeper. [Bainbridge, Newcastle-upon-Tyne. March 21.
- Prince William, cotton spinner, Stockport, Chester. [S. Edge, Manchester; and Edge, Inner Temple, London. March 3.
- Phillips Phillip Jones, Oxford street, Middlesex, upholsterer. [Pearce and Dixon, Paternoster row. April 7.
- Powis Richard, veterinary surgeon, Grosvenor's Mews, Hanover square. [Robinson, Charterhouse square. March 3.
- Powditch George, Liverpool, master and mariner. [Phillips, Fenwick-street, Liverpool; and Acheson, Austin Friars, London. March 17.
- Powell W., Broad street, St. Giles's, linen draper. [Swain and Stevens, Old Jewry. March 17.
- Pink Wm., commonly called and known by the name of William Field and John Birch, Charles-street, Grosvenor square, tailors. [Richardson, Bury street, St. James's. April 17.
- Pearkes Phineas, late of St. Helens, Worcester, Worcestershire, grocer. [Price, Worcester; Barker, Gray's inn, London. March 31.
- Potts Laurence, Bristol, cutler. [Morgan, Bristol; and James, Gray's inn square, London. March 30.
- Parker J., Narrow wall, Lambeth, victualler. [Druce, Billiter square. April 17.
- Privatt Richard, Leicester place, Westminster, auctioneer. [Salkeld, Hatton garden. April 21.



## *Bankrupts.*

- Proctor John, late of Beal, otherwise Beashall, York, cornfactor. [Bingley, Snaith, York; and Wright and Pickering, Temple. April 17.
- Pickering John, the younger, Rumcorn, Cheshire, miller. [Ashley, Frodsham; and Wainwright, Hare court, Temple. April 14.
- Parkinson George, of Deal, druggist. [Holmes, Mark lane. April 24.
- Quartan John, High Catton, Yorkshire, dealer. [Brook, York; and Hall and Bell, Bow lane, Cheapside. April 21.
- Rutt Thomas, Dalston, Middlesex, stockbroker. [Watton, Girdler's hall, Basinghall street.
- Rawlings Thomas, Gloucester, mercer. [Price, Gloucester; and James, Gray's inn square. March 6.
- Richardson Silvester, Blackburn, Lancaster, grocer. [Ainsworth, Blackbury; and Clarke and Richards, London. March 10.
- Riley Samuel, Sayland, Yorkshire, cotton spinner. [Alexander, Halifax; and Gleadhill and Payne, Lothbury, London. March 17.
- Raven William, Colchester, linen draper. [Daniel, Colchester; and Forbes, Ely place, Holborn. April 7.
- Ross A., and J. Ogilvie, late of Argyle street, Middlesex, army agents. [Shaw, Tudor street, Blackfriars. March 20.
- Robinson N., of the Paragon, Southwark, tanner. [Pering, Lawrence Poultry hill. March 20.
- Roberts, Wm., Hainmersmith, Middlesex, coal merchant. [Pewtriss, Holborn court, Gray's inn. March 24.
- Rookley Thomas, Bridgewater, Somerset, baker. [Boys, Bridgewater; and Blake, Cook's court, Carey street. April 17.
- Richardson Joseph, of Penrith, Cumberland, ironmonger. [Ireland, Staple inn, London; and Ellwood, Penrith. March 24.
- Richardson Peter, of Wakefield, York, Woolstapler. [Allen and Exley, Funnival's Inn; and Dawson, Wakefield. April 28.
- Read Amphilas, of Aldermanbury, warehouseman. [Hurd, King's Bench Walk, Temple. March 3.
- Shadwick Nath., Bolton, Lancashire, innkeeper. [Foulkes, Manchester.
- Stinton Samuel, Birmingham, Warwickshire, timber merchant. [Egerton, Gray's inn, London; and Dixon, Birmingham. April 3.
- Stewart Robert, and William Stewart, merchants, Manchester. [Kay and Renshaw, Manchester.
- Simons Solomon, Lynn, Norfolk, silversmith and jeweller. [Pearce and Dixon, Paternoster row, London. April 3.
- Stone George, Gosport, Southampton, boot and shoemaker. [Minchin and Compigne, Gosport.
- Speed George, Blackman street, Newington, stable keeper. [Collyer, Great Eastcheap.
- Snowden, J., Plymouth, draper. [Dawes, Angel court, Throgmorton street. April 21.
- Stoherd John, Coningsby, Lincolnshire, common brewer. [Cope, Boston; and Wilson, Castle street, Holborn. March 3.
- Sergeant Francis, Wakefield, York, innkeeper. [Lumb, Wakefield; and Batty, Chancery lane. April 17.
- Shipley Thomas, Walcot, Somerset, coach master. [Cheersman, Bath; and Bleasdale and Alexander, New inn. March 6.
- Smith Wm., West Bromwich, Worcestershire, butcher. [Burrish, Birmingham; and Devon and Tooke, Gray's inn square. April 14.
- Solomons Isaac, Osborn place, Whitechapel, merchant and insurance-broker. [Aubert, Symond's inn, Chancery lane. March 13.
- Smith John, and Robert Smithies, Pool, Yorkshire, paper makers. [Allen and Exley, Funnival's inn, London; and Snaith, Otley. March 24.
- Schultz W. and P. Unger, Great Winchester street, Broad street, London, merchants. Fisher, jun. Bartlett's buildings, Holborn. March 24.
- Savory Thomas, Scutthorpe, Norfolk, miller. [King, Great Denham, Norfolk; and Geldard, Holborn court, Gray's inn. March 20.
- Sevenson Archibald, Margaret street, Cavendish square, Middlesex, engine maker. [Burgoyne and Fielder, Duke street, Grosvenor square. April 14.
- Simon Louis, Cold bath fields, watchmaker. [Russen, Crown court, Allensgate street. April 28.

## *Bankrupts.*

Thomson, John, silversmith, Goswell street. [Smedley, Aldersgate street.  
Teasdale Wm., cotton broker, Manchester. [Rutherford, Bartholomew close,  
London.  
Tanner Richard, Birmingham, upholder. [Pearce and Dixon, Paternoster row.  
April 17.  
Thompson William, and Percival Barker, late of Dean street, Southwark, mer-  
chants. [Wadson and Co. Austin friars.  
Troke John, New Sarum, Wiltshire, cutler. [Read, Salisbury; and Carruthers,  
Clements inn, London. March 27.  
Thompson William, of Birmingham, stone mason. [Dolphin, Birmingham; and  
Johnson, Temple, London. April 24.  
Tucker Ewens, of Deptford, tallow chandler. [Dugleby, Union street, Dept-  
ford. April 28.  
Varley Samuel, of West Burton, York, hosier. [Dewhurst, Preston; and  
Barretts, Holborn court, Grays inn, London. April 24.  
Wheeler Joseph, late of Hampstead, victualer. [Denton, Gray's inn.  
Wardell George, Mansell street, Goodman's fields, mariner. [Eviatt and Rixon,  
Haydon square, Minorities. March 10.  
Wilson John, Nantwich, Chester, timber merchant. [Harding, Betley, Stafford;  
and Wilson, Crown office court, Temple. March 13.  
Wilde James, Dale, York, clothier. [Ainley, Delph, Saddleworth; and Battye,  
Chancery lane. March 13.  
Watmore William, New Windsor, inn keeper. [Pearsall, Windsor; and Hurd,  
Temple. April 21.  
Walford Richard, Chester, porter brewer. [Crump and Lodge, Liverpool; and  
Battye, Chancery lane. April 21.  
Watkins John, Northmoor, Oxford, butcher. [Ensham, Oxford; and Edmunds  
and Son, Exchequer office of Pleas, Lincoln's inn. March 20.  
Winder Thomas, and William Jewhurst, Westminster bridge, iron founders.  
[Bigg, Hatton garden. March 27.  
Wingate T., Market Raisin, Lincoln, linen draper. [Holloway, Boston; and  
Johnson and Gaskell, Gray's inn. April 17.  
Wall Thomas, Bristol, common brewer. [Hall and Jarman, Bristol; Tarrant  
and Moule, Chancery lane. March 31.  
Walker George, of Braintree, Essex. [Luxmore, Red Lion square, April 24.  
Yend Henry, now or late of Upton-upon-Severn, Worcestershire, currier.  
[Beale, of Upton-upon-Severn; and Anth. Watts, Symond's inn, London.  
April 3.

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*The Reports of the King's Bench in Hilary term, extending beyond the present Number, we have inserted some from the court of Chancery, which we shall conclude, together with the remainder of the Cases in the court of King's Bench for Hilary term, in our next Number.*

*The EDITOR having observed an advertisement in the Monthly Magazine under his name and that of Mr. Williams, desires to inform his Readers that it was inserted wholly without his knowledge; he having no share in the first or second volume, and having written only a short introduction to the opinions on the Volunteer Act, in the twelfth Number, besides the Reports in B. R. for Easter and Trinity terms.*

**ORIGINAL MANUSCRIPT**  
**OF**  
**LORD CHIEF JUSTICE COKE'S COMMENTARY**  
**UPON**  
**LITTLETON'S TENURES.**

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**WE** are happy in being able to announce to our Readers a discovery, which we may venture to predict, will excite considerable curiosity in the profession. It is no other than the **ORIGINAL MANUSCRIPT OF SIR EDWARD COKE'S COMMENTARY** upon the **TENURES OF LITTLETON**, which, among the prodigious collection of manuscripts in the *British Museum*, has hitherto remained unobserved, notwithstanding the laborious researches of the two learned gentlemen to whom the profession is so much indebted for the unwearied attention and singular ability with which they have executed the last edition of this invaluable work.

This curious memorial of the industry, the research, and the talents of **SIR EDW. COKE** appears to have been added to the *Harleian Collection* by the then intelligent librarian, **Mr. Wanley**, in 1715, but from whom it was purchased, or through what chance it became exposed to sale, he has not informed us; but has contented himself with describing it in the catalogue merely as "*a thick octavo, containing in print LES TENURES de Monsieur LITTLETON, anno 1572, with the original Observations and Enlargements of the Lord Chief Justice COKE, in his own hand-writing, covered with a rich embroidery wrought by his own daughter.*" Of this rich embroidery little now remains. It is an uncommonly thick book, strongly bound up, and has the appearance of having been often consulted, as many of the pages are loose, much soiled, and the margins in some instances injured. The printed copy of *Littleton* is introduced about the middle of the volume, and is interleaved with a great many pages very closely written upon both sides, as well as much manuscript, both at the beginning and conclusion of the volume. The

printed pages of *Littleton* are also in general much written upon, and in many instances even interlined.

It must certainly be lamented that Mr. *Wanley*, who was so well qualified for the task, did not take some pains to trace the different hands through which this manuscript had passed. Its authenticity, however, we are able to ascertain beyond all dispute, by a comparison with other manuscripts which are undoubtedly of Sir *Edward Coke's* hand-writing; and one passage of his *Life* in the *Biographia Britannica*, may in some degree account for this precious relic not being in the possession of his family. Sir *Edward*, after the dissolution of the parliament of 1628, retired to *Stoke*, in *Buckinghamshire*, where he remained until his death in the year 1634. The resentment of the court was carried to such a pitch against him, that while he lay upon his death-bed, Sir *Francis Windebank*, one of the secretaries of state, by an order of council, searched his house for seditious and dangerous papers, under the colour of which, he carried off "*his Commentary upon Littleton, with his Life prefixed, written with his own hand.*"\* His *Commentary upon Magna Charta*; his *Pleas of the Crown*, and the *Jurisdiction of Courts*; his 11th and 12th *Reports*, in manuscript, and 51 other manuscripts; likewise his last will, wherein he had been for several years making provision for his younger grandchildren. The books and papers were detained until one of his sons moved the House of Commons, in 1641, "that the books and papers taken by Sir *Francis Windebank*, might be delivered to Sir *Robert Coke*, heir to Sir *Edward*, which the King, at the request of the House, immediately granted, and such of them as could be found were accordingly delivered up, but his Will was never recovered." In a future stage of this *Memoire* we shall investigate more closely whether the *Commentary* was among those given up.

The MS. which we are now describing is in fact almost identified with the one seized by *Windebank*, from what is stated as to Sir *Edward's Life* being prefixed to it; for this volume commences with an account in Latin containing, not indeed a regular narrative, but, a register of all the stages and occurrences in his chequered life, and, what is peculiarly important from the extreme inaccuracies of all the biogra-

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\* In the *Biographia Britan.* (article *Coke*) it is said that *Windebank* carried off 'the *Commentary upon Littleton*, and the *History* of that Judge's *Life* in his own hand-writing.' This is plainly a mistake.—See *Coke's Detection*, vol. 1.

phers of this great man, the dates and most minute particulars of his birth, marriage, and rise in the world. They are not, however, in many instances, chronologically arranged. This, from its peculiar curiosity, we shall present to our Readers transcribed *verbatim* from the original. We must omit, however, from want of room, the particulars relative to his children until our next Number, when we shall also give an account of all the various Readings and other particulars worthy of notice in the edition of *Littleton*, upon which Sir *Edward* actually wrote his Commentary. We also propose to collate, although it must be a work of great difficulty and labour, from the small character of the hand-writing, and from the injury which several of the leaves have sustained, the whole of the manuscript with the printed editions, and wherever we find any difference with the printed Commentary, we shall notice the original reading.

We shall also notice, as we proceed, the different inaccuracies which appear in the printed Lives, when compared with his own indisputably accurate account.

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### *Natiuitas Edw. Coke.*

Edwardus Coke, Primogenitus filius Roberti et Winifredæ Coke, natus fuit apud Mileham, in Com. Norff. die Sabbati. videlt. primo die Februarii, in festo scæ Brigettæ, ac in Vigilia purificationis beatæ Mariæ Virginis, Anno Dom. 1551, annoq. regni nuper Regis Edwardi, 6ti, 5to, circa horam 11 ante Meridiem ejusdem diei. \*

### *Nuptiæ Edw. Coke.*

Prædictus Edwardus Coke et Brigitta Paston, filia et Hæres Johannis Paston Armigeri defuncti et Anne Uxoris ejus, maritati fuerunt apud Cokeley, in Com. Sussex, die lunæ videi. decimo tertio die Augusti, in festo sancti Hippoliti, annoque regni Dominæ Elizabethæ modo Reginæ vicesimo quarto, annoque Domini 1582 †.

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\* It is said in the *Biographia Britannica*, vol. ii. p. 1378, that he was born in 1550.

† The Author of *Sir Edward Coke's Life*, in the *Biographia Britannica*, says, in a note, "It does not very clearly appear when either

4 November die Jovis, 1613, Sworne of the Privie Council.

25 October, anno undecimo Jacobi regis, termino Michaelis constitutus fui Capitalis Justiciarius Angliæ.

Brigitta dilectissima et præcharissima Uxor mea diem clausit extremo die Lunæ 27 die Junii, 1598, apud Ham, in Com. Essex, et sepelitur apud Litleshale, in Cancellia ibim. —benè et beatè vixit, et tanquā. vera ancilla Domini obdormivit, nec dubio nunc vivit et regnat in Cælo\*.

Admissus fui in Collegium sci Trinitatis in Cantabrigiā, Mense Sept. an° 9 Eliz. 1567, et ibi remansi per 3 annos†.

Admissus fui in Hospicium de Clifford's Inn, Hil. Term, posteaque, viz. 24 Aprilis, Anno Dom. 1572, Regin Eliz. 14. admissus fui in Hospicium interioris Templi, Term Pasch. —Vocatus fui ad Barram exterior. 20 Aprilis, Anno Dmī. 1571, Reg. Eliz. vicesimo, Term Pasch.

Electus fui Lector Hospicii de Lion's Inne, an° Dmī. 1579, Regno dictæ Reg. 21, in primo die Solis, Term Pasch †.

Electus fui Recordator. Civitat. Norvici, 2 Apr. An° Dm. 1586, Regno dict. Reg. 28 ‖.

Assignatus fui Justiciarius pacis in Com. Norff. Mense Aug. 1586, Regno dictæ Reg. 28.

Vocatus fui ad Bancum dicti Hospicii Inter. Templi, die Sabb. 16 die Maii, Anno Dmī. 1590, Regni dictæ Reginæ tricesimo secundo, Term Pasch.

Electus fui Recordator Civitatis London, 14 die Octobris, an°. Dmī. 1591, annoq. regni Eliz. 33. sed, magnā importunitate et labore, Will<sup>m</sup>. Fletewood Serviens. ad legem moderni Recordator. locum sustinuit; quanquā electus fui una-

he married this lady or when she died; but from several concurring circumstances, it seems pretty evident that his first marriage was contracted about *seven* years after he was first called to the bar."—P. 1378. This is an error of three years.

\*It is said in the *Biographia Britannica* (p. 1379) "Some short time after this (1592) he lost his wife, by whom he had ten children."—This appears to be an error of six years.

† "He remained in the University four years."—*Biog. Brit.* ut supra.

‡ "About this time (1578) he was appointed Reader of Lion's Inn, and so continued for three years."—*Vide Biog. Brit.*

‖ This appointment is mentioned by several biographers, as if it had occurred almost immediately after his marriage, whereas there appears to have been an interval of four years.

nimo consensu totius Curiae Aldermanniorum: sed postea 7 die Jan. Anno 34 Eliz. annoque domini 1592, apud Ædes meas in Huntingfield, recepi literas a Maiore et toto Senatu de London, quod dictus W. Fletewood sursum reddidisset officium prædict. quodque unanimo consensu, nullo contradicente, eligerant me Recordatorem Civitatis prædict. et postea 14 die ejusdem Mensis coram Maiore et Senatu, apud Guilhaldam investitus fui et Locum Recordatoris accepi\*.

Electus fui Lector Hospicii interioris Templi. termino Pasch. Anno 34 Eliz. An°. Dmī. 1592, primo die Solis eodem termino.

Die Solis undecimo die Junii, anno 34 Regni Eliz. annoq dom. 1592, serenissima nostra Regina, ex abundanti sua gratiâ, erexit me in officium Solicitatoris sui Generalis, prout patet per literas Dmī. Treasaurarii Angliæ mihi in ea parte direct. gerent. dat. 11 die Junii, 1592, et postea, 16°. die ejusdem Mensis a Johanne Puckering, Milite Dm°. Custode Magni Sigilli Angliæ, recepi literas patentes domæ. Reginæ mihi confect\*. de officio prædict. et juratus fui, et post hac videl'. 17 die ejusdem Mensis in Guilhaldâ Civitatis London, in curiâ Maioris et Aldermanniorum, sursum reddidi officium Recordatoris Civitatis prædict. et, pro consilio meo impenso, ex sua benevolâ Voluntate dederunt mihi Centum Libras,

Ubi Lector Interioris Templi composui septem Lecturas super Statutum de 27 H 8† de Usibus in poss. transfer. et primus dies prælectionis fuit dies Mercurii, 2 dies Augusti, 1592, et post quinque lecturas finem feci propter pestem unde unus de hospicio medii templi obiit et alii qui fuerunt de Consortio et Societate famular. et Servient. meorum similiter de peste

\* It is extremely remarkable that Sir Edward Coke's appointment to so very conspicuous an office as that of Recorder of London, is not noticed by any one of his biographers, at least that we have met with: and the pertinacity with which Sergeant Fletewood endeavoured to retain the place might, one would think, have attracted some notice.

† This is the only mention which we have met with that Sir Edward Coke ever read upon the *Statute of Uses*. Indeed, it is not noticed by any of his biographers that he ever was Reader of the Inner Temple, although *Dugdale*, in his catalogue of the Readers of the Inner Temple, (*Origines Judiciales*, p.166) has this entry- "*Autumna, 34 Eliz. Edwardus Coke, Recordator Civitatis, Lond.*" (postea Attor. Dominæ Reginæ generalis; deinde Capitalis Justic. ad Plac. coram Rege tenenda assignatus.) We are not without hopes that we shall be able to discover these Readings on *Uses*, which must be very valuable. Sir Edward's Readings on *Fines* are the only Readings of his which are published.

obierunt. Ad Lecturas meas fuerant 160 Socii et 9 de Banco Hospicii Interioris Templi 40 de le Barre et alii Socii mei interioris templi associebant me usque ad Rumsford in itinere meo versus aedem meas apud Huntingfield, in Com. Suff. †.

Die Solis 28 Januarii, an°. Regni Reg. Eliz. 35 annoq. dmi. 1592, nominatus fui per Dominam Reginam et Concilium apud Hampton Court in officium Proloquutoris Parliamenti apud Westm. 19 die Februarii tenendi.

### *Unus Militum Comitatus Norff.*

Die Lunæ quinto die Februarii, an°. Dm. 1592, Regniq. Reg. Eliz. 35, in pleno Comitatu tent. apud Castrum Norwici in Com. Norff. electus fui et nominatus eodem die int. horam octavam et nonam ejusdem diei in primo loco. fvore unus Militum Comitatus prædict. pro prædicto Parlamento ad veniendum pro eodem Com. ad Parliamentum illud, per 7000 mille et ultra inhabitantes et residentes infra dictum Com. *nullo contradicente et ista electio fuit libera et spontanea nullo contradicente et sine ambitu seu aliqua requisitione ex parte meâ;* et in 2°. loco Nathaniel Bacon Ar. electus fuit unus Militum comitatus prædict. pro Parlamento prædicto.

### *Proloquutor Parliamenti.*

Decimo die Februarii, an°. Regni dictæ dom. Reginæ 35, annoq. Dmī. 1592, electus fui in officium proloquutoris

† *Dugdale* (Orig. Jud. p. 208) informs us that this was the practice. He says, "Heretofore the Reading continued by the space of a month, but of later times only a fortnight, beginning commonly on the Monday, and ending the Friday se'nnight following: on which day the Reader (after breakfast) comes unto the cupboard, with his assistants, and cupboard men, and there makes a grave and short speech to them, tending to the excuse of his weakness, with desire of pardon for his errors committed: which forthwith is answered by the most ancient Benchers then present, who extolled the Reader's bounty, and learning, concluding with many thanks unto him: which ended, he taketh his usual place; and having put his cases upon the division of that day, two of the cupboard men argue one of those cases, and a third desires to know Mr. Reader's opinion thereon the next term: whereupon the Reader ariseth without making any argument at all, and, taking his leave of the Society, retires unto his chamber, and prepareth himself for his journey homewards; *wherein the young students and many others do usually accompany him for that day's journey*, bringing him forth of the town with great state and solemnity; and at night bestow a great supper upon him in his Inn at their own charges; and the next morning part company.



Parliamenti, per liberum Consensum totius communis domus Parliamenti;—22 die Februarii presentatus fui serenissimæ dmæ Reginæ sedenti in regali solio in superiori domo Parliamenti et admissus fui regio assensu et cum summa gratia et favore (Johe. Puckeringe Milite tunc Dno Custode et Prolocutore superioris Domus Parliamenti) et parliamentum istud finivit et dissolutum fuit 10 die Aprilis Anno sup. dicto et continuerat p. 7 Septimanas et unum diem.

*Attornatus Generalis.*

Die Solis 24 die Marcii, 1593, annoq. Regni Reginæ Eliz. tricesimo sext. Dna Regina ex abundanti gratiâ suâ constituit me Attornatum suum Generalem apud Whitehall, in privatâ Camerâ sua, circa unum quarterium horæ post quartam in pomeridiano: posteaque scilicet ix die Aprilis proxime sequent. recepi lras patentes dmæ Reginæ a Johe. Puckeringe Milite dno. Custode Magni Sigilli Angliæ et Sacramentum prestiti coram eodem Dmno. Custode\*.

Et prædicto 24 Marcii, An°. Dmī. 1593, usque 13 diem Novembris, 1695, non fuit aliquis Solicitator electus, et sic per totum idem tempus gavisus sum officium tam Solicitatoris generalis quam attornatus generalis non sine meo magno labore; et prædict 13 die Novem. 1595, Thomas Fleming Serviens ad Legem constitutus fuit Solicitator General.

22 April, 1603, Reg. Jacobus constituit me Attornatum suum Generalem.

22 Maii, 1603, apud Grenewich, in privata Camera, Rex Jacobus, ex magno favore, constituit me \* \* \* \*†.

Ultimo die Junii, 1606, constitutus fui capital. Justiciar. Communis Banci.

23 die Junii, 1614, die Jovis electus fui Capital. Seneschall. Academiæ Cantabrigiæ communi consensu omnium, nullo contradicente, et me nesciente; quod quidem

\* *Dugdale*, in his *Chronica Series*. Orig. Judic. p. 99, dates Sir *Edward Coke's* patent in 1594, 10 April, 36 *Eliz.*

† The bottom of the page is here so much soiled that it is impossible to make out the remainder of the sentence. It plainly refers, however, to his being knighted. For we are told in the *Biographia Brit.* (p. 1380) that "upon the 22d of May, 1603, when the King feasted the principal persons of the kingdom, on account of his quiet accession, at Greenwich, he (*Coke*) together with *Robert Lee*, then Lord Mayor of London, and *John Crooke*, Esq. the Recorder, received the honour of knighthood.

Thomas Howard, Comes Suff. nuper tenuit ; et ante eum Robtus, Comes Sarum.

Die Lunæ in fest. Paschæ. Anno 1<sup>o</sup> Caroli Regis electus fui unus militum pro Comit. Norff. ad Parliamentum, 1<sup>o</sup> Caroli, sine aliqua motione aut cogitatione inde per me habitâ. Similiter electus fui unus Militum pro Com. Norff. ad secundum Parliamentum et electus fui unus Militum pro Com. Bucks.

Anno 3<sup>o</sup> Caroli Regis electus fui Milit. Parliamenti pro duobus Comit. viz<sup>t</sup>. pro Com. Buckingham et pro Com. Suffolk : at elegi Com. Buck. eo quod ibim residens fui et per eundem Comit. prius electus fui.—rare electus est aliquis Milit. duorum Comit.

[*To be continued.*]

ACCOUNT AND ANALYSIS  
OF  
NEW LAW BOOKS,

WITH OCCASIONAL REMARKS.

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ARTICLE V.—*The PRESENT PRACTICE and COSTS of the High Court of CHANCERY, with practical Directions and Remarks for the Guidance of Solicitors in the conducting of a Cause from the Commencement to its Close. And also, in other Proceedings under the Jurisdiction of the Lord Chancellor ; in which the Practice of the Court and before the Master is fully explained : with an Appendix, containing a valuable Collection of modern Precedents. By SAMUEL TURNER, Solicitor ; 3d Edition, enlarged and improved by ROBERT HINDE VENABLES, Esq. of the Six Clerks' Office ; 2 Vols. 8vo.—Clarke and Sons, Portugal street, Lincoln's Inn.—pp. 777 and lxiv.*

SIR William Blackstone, in that part of his *Commentaries* in which it became necessary to treat of the practice and forms of the courts, delivered an opinion upon books of practice, which has been in a great measure adopted with respect to all law books in general, viz. “ that that which bears the latest edition is *usually* the best.\*” From this sentence, that “ *damns with faint praise,*” he excepted *Gilbert's History and Practice of the Court of Common Pleas*, which, he describes “ as a book of a very different stamp; and which (though like the rest of his posthumous publications) it has suffered most grossly by ignorant or careless transcribing, yet it has traced out the reason of many parts of our modern practice from the feudal institutions and the primitive construction of our courts in a most clear and ingenious man-

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\* *Blac. Com.* 3. 272. note (a).

ner." Since the time when this passage was written, a book of practice of the *court of King's Bench* has been published, with a precision and accuracy of statement, and with a clearness of arrangement which would probably have drawn from the learned commentator, a similar mark of particular approbation, though it does not attempt historically to elucidate the sources and grounds of the practice, but, in general, is confined to the tracing out of the progress of a suit from its commencement to its close. The approbation of the profession has been so universally bestowed on the work of Mr. *Tidd*, to which we allude, that it might have been expected that some one would have been stimulated by it to undertake a similar task as to the court of *Chancery*, and further to have elucidated the *practice* as well by an historical deduction of it from its first sources, for which, we presume, there are many materials in the printed and manuscript works of some of its founders and regulators, such as Lord *Ellesmere*, Lord *Bacon*, Lord *Coventry*, Sir *Julius Caesar*, and others; as also, by a clear and methodical arrangement of the various decided points to be collected from the more modern books of records.

Without denying to Mr. *Venables* the just credit which is due to him for many useful and practical directions to the *solicitor* and his *clerks*, in the ordinary routine of the business in a *solicitor's* office, we regret that he has not attempted a work on a plan of a somewhat different nature, but has directed his attention as much to the art of making out bills of costs, as to the mode of conducting a suit. We by no means question the utility or the correctness of these tables, for they are all taken from bills actually taxed before the Master, though, we fear, that without due discrimination, they may sometimes suggest to a young practitioner many a *three and four pence*, which if, instead of making out his bill by *precedent* as he draws an ordinary notice, he had consulted only his *day-book* of actual fees, disbursements, and attendances, he would perhaps not have charged; and we cannot help thinking also, that in addition to the column intitled *tax off*. it would have been a great convenience to practicers, both in *town* and *country*, to have inserted another of the fees of *agency*.

As this book has been for some time before the profession in two editions previous to the present, and its general merits are well known, it is unnecessary to enter into a close and critical examination of it; but for the benefit of some of our readers, and in pursuance of our usual method of no-

ting books, we shall proceed shortly to state the general plan of it.

The work commences with a sort of *analytical introduction* to the practice,\* in which the various species of bills, the process of *subpœna* and contempt, abatement, answers, exceptions, pleas and demurrers, replications, rejoinders, examination of witnesses, hearing of the cause, decree, rehearing, appeal, interlocutory proceedings, such as reports, orders, certificates, paying into and receiving money out of court, injunctions, *ne creat regno* and costs, are but shortly stated. Then followed several bills of costs to which succeed *practical directions and remarks applicable thereto*. The order of them is as follows:—First, a bill of costs for the *plaintiffs* in a suit for carrying the trusts of a will into execution—Ditto for the *defendants* in the foregoing cause—Ditto on a petition that an infant heir might be directed to convey mortgaged premises—Ditto for a *plaintiff* where an issue was directed on the hearing—Ditto for *defendant*—Ditto for a *plaintiff* on proceedings against a peer, plea and answer put in, argument of the plea, &c.—Ditto on the rehearing of a cause—Ditto on discharging an order for irregularity—Ditto on an application to discharge a former solicitor, &c.—Ditto on the foregoing matter where more than one-sixth was taken off, and the solicitor ordered to pay costs—Ditto between solicitor and client. On taxing the solicitor's bill, and taking the papers out of the solicitor's hands where the *client* pays the costs of taxation, the bill being under a sixth—Ditto on a petition that trust money directed to be laid out in the purchase of hereditaments may be paid to the person entitled thereto under the entailed estate act—Ditto in the case of a lunatic petition.

The second volume is more properly an appendix paged in a regular and connected series with the first, and contains several very useful precedents of practical forms and introductory observations thereupon, in matters *incidental to every suit in the progress of it*, viz. *Affidavits—Certificates—Charges and claims—Discharges—Exceptions—Motions and notices—Objections—Petitions—Proposals*—together with an index.

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\* This is an improvement of the *Solicitor's Practice in the High Court of Chancery epitomized*; a useful little book, which has been often published.

On the subject of dismissing a bill, a point lately occurred, which we shall insert, as the Editor does not seem to have foreseen the distinction, when treating of the dismissing of bills.

A motion was made on behalf of one of the *defendants* in a cause to dismiss the bill with costs as against him, no proceedings having taken place for three terms after his answer was filed. It was stated on the other side that the only material *defendant* in the cause had not put in his answer, and that the *plaintiff* had been proceeding against him with all due diligence to sequestration, in order to have the bill taken *pro confesso*. That until this was done or an answer obtained, it was impossible for the *plaintiff's* counsel to judge whether it would be proper to reply to the answer of this *defendant*, or how otherwise to proceed. It was insisted for the *defendant* that the motion was of course; that the *defendant* who had answered was in all cases intitled to have the bill dismissed, as against him, in order that he might have his costs; that he was not bound to wait for the default of others, and that he must be brought before the court again, if it should afterwards appear necessary. It was submitted, on the other side, that this course would only harass the *plaintiff*, who had been guilty of no *laches*; and that this was not a motion of course, but an appeal to the discretion of the court, whether, under the circumstances, the bill should be dismissed. The LORD CHANCELLOR expressed great difficulty in adopting a rule which seemed so contrary to all principle and reason, as the *plaintiff* had not been guilty of any neglect, and asked the opinion of the most experienced practitioners on the point. Mr. *Stanley*, and several other gentlemen answered, that the practise was as had been stated by the counsel who made the motion, and that both Lord *Thurlow* and Lord *Rosslyn* had dismissed many bills under similar circumstances. The LORD CHANCELLOR, upon this, made the order; but expressed himself not at all satisfied on the point.

Mr. *Venables* has, we confess, made many useful additions, particularly by noticing modern cases, which occur in the books, but, we think, his plan has considerably fettered his exertions, and we should rather have seen them employed in a work raised upon a ground-plot of his own. Bills of costs are really so principal a feature in his book, that we have been sometimes inclined to think the title should

more properly have been instead of the Present Practice and Costs, &c. *The Present Costs and Practice*, &c. with which trifling alteration we may safely recommend this work to the early attention of such of our readers as are or may become *solicitors* in the High Court of *Chancery*. We cannot conclude without noticing that the author or his editor, which ever he be, has endeavoured to gain the approbation of another part of the profession by the following friendly recommendation, which, after the new stamp regulations, will become more important.

“ The bill may be drawn by the solicitor; but as great care and attention is generally required in the framing of a bill, it is advisable for the solicitor to lay *proper instructions* before his counsel, who will draw and sign a draft of it. This saves a great deal of trouble; for though the solicitor may have an extensive knowledge of the theory as well as the practice of his profession, yet this is very rarely the case, and if the bill should be planned improperly, the counsel will experience equal difficulty in altering and settling as in drawing the bill from the beginning.

“ The bill must be settled and signed by counsel; the *fee* to him for drawing or perusing the draught of a bill, as the practice is at present settled, depends upon the length of it; and in many cases, perhaps, that mode of ascertaining the fee is proper, but it is certain that cases *do* sometimes occur where the observance of such a rule would be *manifest injustice*. Cases may happen where a much *larger* fee ought to be paid; where the brevity and conciseness of the bill, selected from a large mass of papers, demonstrates the judgment of the draftsman, and certainly is no proof that the labour has not been equally great, as when for this conciseness a loose and desultory statement of facts is substituted, intermixed with argument and declamation!”

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ARTICLE VI.—HORE JURIDICÆ SUBSECIVÆ: a connected Series of Notes, respecting the Geography, Chronology, and Literary History of the principal Codes and original Documents of the Grecian, Roman, Feudal, and Canon Law. By CHARLES BUTLER, Esq. of Lincoln's Inn.—BROOKE and CLARKE, Bell-yard.—pp. 136 and xiv.

THOSE who are acquainted with Mr. *Butler's* former publications, which may well be presumed, as this is

professed to be, the products of *leisure hours*, and those, we may add, exceedingly well employed, will be gratified with the appearance of this very neat and commodious little treatise, which forms an excellent introduction to the study of the various codes enumerated in the title page.

The subject of the work is in itself so extensive, and the view of it which the author has given in an introduction of a few pages, is so clear and succinct that we shall insert it in preference to any analysis of our own.

“ The following sheets complete a very imperfect execution of a design, which, almost in the first moments of his engaging in the study of the law, the writer formed, of committing to paper *a succinct Literary History of the principal Codes extant of Sacred and Profane Law*. Such a work, executed with ability, would be curious, interesting, and instructive : the writer’s projecting it shews his equal ignorance, at the time of its nature and extent, and of his inability to execute it.

“ It has not however been wholly out of his mind; so that, for a great number of years, he has been in the habit of employing his leisure hours, in the study of these codes, and in committing to paper his observations on them.

“ Encouraged by the reception, which a private impression of it had received among his friends, he published, in 1799, something in the nature of a *Literary History of the Old and New Testaments*—(on many accounts the most important of all codes of law)—under the title “ *Horæ Biblicæ*, “ *being a connected Series of Miscellaneous Notes on the original Text, early Versions, and printed Editions, of the Old and New Testaments*.”

“ He has since circulated among his friends, a private impression of a *similar series of Notes on the Coran, the Zend-Avesta, the Vedas, the Kings, and the Edda*, the sacred Codes of the Mahometans, the Parsees, the Hindoos, the Chinese, and the Scandinavians.

“ The following sheets, containing a *similar series of his Notes on the Grecian, Roman, Feudal, and Canon Law*, now solicit the reader’s attention.

“ As some excuse for the imperfections of these compilations, he begs leave to mention, that he has had little leisure to bestow on them beyond occasional bits and scraps of time which a very laborious discharge of the unceasing duties of a very laborious profession has left at his command, and which he has always found it a greater relaxation to employ in this manner than in any other.”



What is here said on the GRECIAN LAW may be found  
to contain some account of

- I. The Geographical Limits of Greece.—II. Of its Legislation.  
*Before Christ.*  
1970 1. In its Fabulous  
1586 2. Heroic  
1202 3. And Historical Age  
926 III. Of the Laws of Lycurgus  
624 IV. ————— Draco  
594 and Solon  
490 V. And of the Decline of the Laws of Athens and Lacedæmon

What is said of the ROMAN LAW, may be  
found to contain some account

- I. Of the Degree of Credit due to the Histories which have reached us of the Five First Ages of Rome  
II. Of the Geographical Limits of the Countries in which the Roman Law has prevailed :  
1. Italy—2. The Roman conquests in Europe—3. And the Roman conquests out of Europe.  
III. Of the different Classes of Roman Subjects  
1. Citizens, or those who had Jus Civitatis 2. Latins, or those who had Jus Latii—3. Italians, or those who had Jus Italicum—4. And of the Provinciæ, Municipia, Præfecturæ & Civitates Fæderatæ  
IV. Of the Government and Form of Roman Legislation.  
1. As originally constituted—2. And as successively altered—3. Of the titles of their laws  
V. Of the History of the Roman Law  
753 1. Its First Period—from the Foundation of Rome till the Æra of the Twelve Tables  
509 Jus Civile Papyrianum  
453 2. Second Period  
451 The Twelve Tables  
3. Third Period—the Laws of Rome during the remaining Period of the Republic  
1. Jus Honorarium—2. Actiones Legis & Solemnes Legum Formulæ—3. Disputationes Fori & Responsa Prudentum  
4. Fourth Period  
46 Julius Cæsar  
*After Christ.* 5. Fifth Period—Adrian  
120 Edictum Perpetuum  
284 Codex Gregorianus  
Codex Hermogenianus  
6. Sixth Period  
306 Constantine the Great

*after Christ.* V. 7. Seventh Period

408 Theodosius the Younger

438 Codex Theodosianus

506 Breviarium Aniani

## 8. Eighth Period—Justinian

528 1. Codex Primæ Prælectionis

533 2. Digestum, or Pandectæ

3. Institutiones

534 4. Codex Repetitæ Prælectionis

566 5. Novellæ

568 6. Volumen Authenticum

7. Libri Feudorum, and other Articles forming the *Decretum Collatio*

8. General Merit of Justinian's Collection

9. Ninth Period—the Fate of Justinian's Law.

753 1. In the Western Empire

2. In the Eastern Empire

906 The Basilica

1453 The Extinction of the Roman Law in the East, in consequence of the taking of Constantinople by Mahomet the Second

10. The Tenth Period—Revival of the Roman Law in the West, in consequence of the Discovery of the Pandects at Amalphi—Collations and Editions of the Pandects

## VI. Principal Schools of the Civil Law

1. School of Irnerius

2. ——— Accursius

3. ——— Bartolus and Baldus

4. ——— Cujas

## VII. Influence of the Civil Law on the Jurisprudence of the principal States of Europe

What is said on the FEUDAL LAW, may be found to contain some account

## I. Of the original Territories of the Nations by whom it was established

1. Scythians—2. Celts—3. Sarmatians—4. Scandinavians  
5. Germans—6. Huns—7. Sclayonians

## II. Of the gradual Extension and Dates of the principal Conquests made by them

## III. And of the principal written Documents of the Learning of Foreign Feuds

1. Codes of Law—2. Capitularies—3. Customary Law

What is said on the CANON LAW, may be found to give some account

## I. 1. Of the Ancient Religion of Rome—2. Of the Gods worshipped by the Romans—3. And of the Colleges of Priests dedicated to their Service

- After Christ.* II. Of their Toleration of Foreign Worship  
 III. Of the Christian Hierarchy  
 IV. Of the General Materials of Canon Law  
 V. Of the History of the Canon Law  
     1. The Ancient Period of the Canon Law  
     200 1. Canons of the General Church  
     300 The Apostolic Constitutions  
     2. Canons of particular Churches  
     385 { Codex Ecclesiæ Orientalis  
     451 { Codex Ecclesiæ Universæ  
     560 { Nomo-Canon of Joannes Scholasticus  
     692 { Synod in Trullo  
     { Nomo-Canon of Photius  
     3. Vetus Canonum Latinorum Editio, by Dyonysius Exiguus—4. Collection of Canons of the African Church.  
     —Church of Spain  
     2. The Middle Period of the Canon Law  
     760 1. Isidore Peccator, or Mercator's Collection of Decreta  
     845 Capitularies of Adrian  
     906 Collection of Reginon Abbot of Prumia  
     1000 Burchardus's Magnum Decretorum seu Canonum Volumen  
     1100 Decretum Canonum, and Panomia of Ivo  
     1150 2. Decretum Gratiani—Breviarum Bernardi Papiensis  
     Collections of Johannes Galensis and Peter Beneventanus  
     1230 Libri quinque Decretalium Gregorii Noni  
     1298 Liber Sextus Decretalium  
     1313 Liber Septimus Decretalium  
     1340 Extravagantes Johannis xxii.  
     1483 Extravagantes Communes  
     1590 Collection of Matthæi  
     Institutiones Lancellotti  
     3. Of the Modern Period of Canon Law.  
     1. Transactions and Concordats between Sovereigns and the See of Rome—2. Counsels of Basil, Pisa, Constance, and Trent—3. Bullarium—4. Regulæ Cancellariæ Romanæ—Decrees and Ordinances, of the various Congregations of Cardinals at Rome; and the Decisions of the Rota—5. Legantine and Provincial Constitutions  
 VI. Authority of the Canon Law.

APPENDIX.—Note 1. \*On the Right of the Crown of England to

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\* This is extracted from the notes to *Co. Litt.* by Mr. Butler.

the exclusive Dominion and Property of the British Seas.—Note II. On the Geographical Division of the Alps—Note III. On the Prætor's Judicial Power, from Dr. Bever's History of the Legal Polity of the British State.—Note IV. On the Modes of quoting the Civil and Canon Laws, from Dr. Halifax's Analysis of the Roman Civil Law.

As we are well convinced that the legal wisdom which draws after it a high and well deserved fame, such as that which belongs to a *Bacon*, a *Hale*, or a *Mansfield*, can only be acquired by a diligent course of study on an extensive and liberal plan, stretching far beyond the narrow circle of ordinary practical information, we are not surprised that Mr. *Butler* should indulge a thirst for general knowledge in the occasional investigation of subjects which may be deemed, perhaps, even more remotely connected than these are, with what belongs to his immediate practice. By some they may indeed be thought to involve too much of difficulty to be fitted for the amusement of the few hours that can be spared from the fatigues of a laborious profession. But there are, in letters, as in arms, those who burn with the thirst of universal conquest, who know no fatigues in the pursuit of the object of their ambition, and make the acquisition of one branch of knowledge only the means of assisting in their further progress through the regions of science, as the gaining of one province leads the military enthusiast to the subjugation of others, and supplies him with means of carrying war into more distant countries. This is always the course of an ardent mind, which is never so well satisfied with ample possessions as it is stimulated by the desire of constant acquisition; and while the vicious ambition of universal despotism to be won by military conquest, threatens nearly all Europe, we have here an example of a lawyer, who, in his peaceful sphere, has projected, as it were, a plan of universal conquest; a course of reading and reflection upon all the remarkable codes of jurisprudence, *divine* and *human*, from the earliest ages to the present. This was the author's object in even his earliest professional studies, and he regrets that after many years he has been enabled to execute but imperfectly, and not according to his own extensive views, a plan, which may be well conceived to be too great for one man, when it is considered that he has not been able to bend the whole of his powers to the task. We wonder not then that Mr. *Butler* deems his present work but an imperfect sketch of that which he would have wished to execute on a more ample scale; but, we be-

lieve, that his readers will have cause to rejoice that he has never been wholly discouraged in his undertaking, and will consider that if he has travelled through a vast and difficult region in the pursuit of intellectual treasures, and has hoped to collect a more ample store than he has had opportunity to bring home, he has yet given them such a plan of the track and course which he has himself pursued that others may have less difficulty in following him, should they be tempted by the same spirit to encounter difficulties in the hopes of further discoveries; and for himself, we trust, he feels contented that he has met only with a common fate in a partial failure of his expectations, which, we yet hope, will never check the future aspirings of youthful ardour, or repress the vigorous energies of enterprising genius, whose lot it always is to aim at great and arduous things. To him then we may safely apply the words in which *Johnson* expresses his own feelings on an occasion somewhat similar, when he regrets the imperfections of his dictionary of the English language—"To have attempted much, is always laudable even when the enterprise is above the strength that undertakes it: to rest below his own aim is incident to every one whose fancy is active and whose views are comprehensive; nor is any man satisfied with himself because he has done much, but because he can conceive little."

We extract the following passage as one which will probably be interesting to English lawyers, since it shews that those useful fictions, which, to persons ignorant of the utility of *forms* in legal proceedings, appear the ridiculous inventions of *legal monks*, have been found in all ages to afford the most convenient modes of obtaining the great ends of justice.

"One mode of process in use at Athens bears a resemblance to the modern practice of trying the title to the freehold by ejectment. That, in its original state, was an action brought by a lessee for years, to repair the injury done him by dispossessing him of his term. To make it serve as a legal process for recovering the freehold, the law now supposes that the party dispossessed has entered on the land; that he has executed a lease of it; and that his lessee has been dispossessed: for this injury the lessee brings his action of ejectment to recover the term granted by the lease: now, to maintain his title to the lease, he must shew a good title in his lessor; and thus incidentally and collaterally the title to the freehold is brought before the court. In the jurisprudence of Athens, the guardian and ward were so far identified, that the latter could not maintain an action against the former; so that, for any injury done to his property, the ward, during the term of pupilage, was without remedy. For his relief

the law authorized the Archon to suppose a lease had been executed by the ward to a stranger; then, the stranger, a kind of next friend, was to bring his action against the guardian, for the injury done to his property during the term; and, if he recovered, he became trustee of what he recovered for the ward. Thus, in each case, a fictitious lease was used as a legal process for bringing the real merits of the case to trial."

In the following passage we have a clear view of the limited power of a *Roman prætor*, an officer who has too frequently been supposed to possess a jurisdiction armed with a vigour beyond the law.

"Such were his rank and authority in Rome, and such the influence of his decisions on Roman jurisprudence, that several writers on the Roman law mention his edicts in terms, which seem to import that he possessed legislative as well as judicial power; and make it difficult to describe with accuracy, what is to be understood by the Prætor's edict. Perhaps the following remarks on this subject will be found of use, and shew an analogy between some parts of the law of which the honorary law of Rome was composed, and some important branches of the law of England.—1st. By the Prætor's edict, as those words apply to the subject now under consideration, civilians do not refer to a particular edict, but use the words to denote that general body of law, to which the edicts of the Prætor's gave rise.—2dly. It is to be observed, that the legislative acts of any state form a very small proportion of its laws; a much greater proportion of them consists of that explanation of the general body of the national law, which is to be collected from the decisions of its courts of judicature, and which has, therefore, the appearance of being framed by the courts. A considerable part of the law, distinguished by the name of the Prætor's edict, was of the last kind; and, as it was a consequence of his decisions, received the general name of his law. In this respect, the legal policy of England is not unlike that of Rome; for, voluminous as is the statute book of England, the mass of law it contains bears no proportion to that which lies scattered in the volumes of reports, which fill the shelves of an English lawyer's library: and perhaps it would be difficult to find, in any edict of a Prætor, a more direct contradiction of the established law of the land, than the decisions of the English judges, which, in direct opposition to the spirit and language of the statute *de donis*, supported the effect of common recoveries in barring estates tail.—3dly. Experience shews, that the provisions of law, on account of the general terms in which they are expressed, or the generality of the subjects to which they are applicable, have frequently an injurious operation in particular cases, and that circumstances frequently arise, for which the law has made no provision. To remedy these inconveniences, the courts of

judicature of most countries which have attained a certain degree of political refinement, have assumed to themselves a right of administering justice in particular instances, by certain equitable principles, which they think more likely to answer the general ends of justice, than a rigid adherence to law ; and where law is silent, to supply its defects by provisions of their own. These privileges were allowed the Prætor by the law of Rome ; in virtue of them he pronounced decrees, the general object of which had sometimes a corrective, and sometimes a suppletory operation on the subsisting laws. They were innovations ; but it may be questioned, whether any part of the Prætor's law was a greater innovation on the subsisting jurisprudence of the country, than the decisions of English courts of equity on the statute of uses and the statute of frauds.—4thly. The laws of every country allow its courts a considerable degree of power and discretion in regulating the forms of their proceedings, and carrying them into effect ; further than this, the Prætor's power of publishing an edict, signifying the rules by which he intended the proceedings of his courts should be directed, does not appear to have extended.—These observations may serve to explain the nature of the Prætor's jurisdiction, and to shew that the exercise of his judicial authority was not so extravagant or irregular as it has sometimes been described."

Speaking of the council of *Constance*, Mr. Butler gives a remarkable instance of that spirit of jealousy which has ever distinguished a neighbouring nation in all her transactions concerning this country. After observing that a succinct and impartial history of the *Transactions and Concordats between sovereigns and the See of Rome* is wanting, and that the papal arrangements with *Bonaparte* would not be the least curious part of such a work, he observes,

" Separate histories have been written of the councils of *Basil*, *Pisa*, and *Constance*, by M. L'Enfant, a Lutheran minister : that of the council of *Constance* is the best written ; it contains an account of a fact of importance to the English nation, but not generally mentioned by her historians—that the French ambassadors contended before the council of *Constance*, that Christendom was divided into the four great nations of Europe, Italy, Germany, France, and Spain ; and that all the lesser nations, among which they reckoned England, were comprehended under one or other of them ; but the English asserted, and their claim was allowed by the council, that the British islands should be considered a fifth and coordinate nation, and entitled to an equal vote with the others."

The view which we have given of this work by the above extracts is sufficient to convey to our readers an idea of the plan and the execution of it, and the authorities cited in it evince that great labour and research have been required for

its completion. It appears, indeed, to be the result of much investigation and extensive reading, in books, some of which seldom fall into the hands of ordinary students; and as Mr. *Butler* neither aims to impose by laboured dignity, nor to dazzle by studied brilliancy of diction, as he avoids every thing which savours of exquisite subtlety or ostentatious profundity, in the remarks which he occasionally introduces, and proceeds right onward in a clear, simple, and concise style, without deviating into tedious inquiries and hypothetical disquisitions, we have seen few books that contain so much information in so small a compass.

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## ACCOUNT OF SIR EDWARD COKE'S ORIGINAL MANUSCRIPT

OF HIS

*COMMENTARY upon LITTLETON,*

(Continued.)

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**P**RÆDICTUS Edwardus cepit in secundam uxorem suam Dmnam Elizabeth Hatton, filiam prenobiliss. Thomæ Dmi Burghley, die Martis, viz. 6 die Novembris 1598, apud domum vocat. Hatton House, in Holborne, in Com. Midd. in præsentia prædict. Tho. dni. Burghley (qui dedit eam) Dmæ Dorotheæ uxoris ejus, Willm. Cecil arm, filii et Heredis apparentis ejusdem Tho. Dm. Burghley et Eliz. uxoris ejus, Anthonii Ashley Militis, et aliorum.\*

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\* This lady was the relict of *William Hatton*, and, as appears from Sir *Edward Coke's* own statement, the daughter and not the sister of *Thomas Earl of Exeter*, as stated in the *Biographia Britannica* (Art. *Coke*). This marriage was the source of many troubles and inconveniences to both parties, and the very celebration of it occasioned no small trouble and disquiet by an unlucky accident that attended it. There had been the same year (1598) so much notice



In festo sci michis an, 27 die Decembris, an\*. 18 Jacobi Regis, commissus fui \*Turri London, et, 8 Aug. sequent., liberatus inde, sine aliqua justa suspicione alicujus criminis et sine aliqua nota infamiae—Gratias Deo.—Unde Poeta.

\* \* \* \* \*  
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notice taken of irregular marriages that archbishop *Whitgift* had signified to the bishops of his province, that he expected they should be very diligent in causing all such persons to be prosecuted as were guilty of any irregularity in the celebration of marriage in point of time, form, or place\*. Whether *Mr. Coke* considered his own and the lady's quality, and their being married with the consent of the family, as setting them above such restrictions, or whether he did not advert to them, it is certain that they were married in a private house without either banns or licence, upon which *Mr. Coke* and his new married lady, *Mr. Henry Bothwell*, rector of *Okeover*, in the county of *Rutland*, *Thomas Lord Burleigh*, and several other persons, were prosecuted in the archbishop's court, but upon their submission by their proxies, were absolved from the greater excommunications, and the consequent penalties, which they had incurred, by overlooking the authority of the church, because, says the record†, they had offended not out of contumacy, but through ignorance of the law in that point.

\* On the 27th December, *Sir Edward Coke* was committed to the tower, and his chambers in the temple being broken open, his papers were delivered to *Sir Robert Cotton* and *Mr. Wilson* to examine‡. On the 6th of January he was charged before the council with having concealed some true examinations in the great cause of the Earl of *Somerset*, and of obtruding false ones. He was, however, released without these charges being at all prosecuted, receiving at the same time some very high but unjust marks of resentment from the king, for he was a second time turned out of the privy council, the king saying that he was the fittest instrument for a tyrant that ever was in England. But these harsh expressions from *King James* need not excite much wonder when we advert to the circumstance of *Sir Edward Coke's* having, in parliament, called the royal prerogative a great monster §.

† We have in vain attempted to decypher the four lines which follow in the MS.

\* *Style's Life of Archbishop Whitgift*, p. 532.

† *Regist. Whitgift*, p. 3, fo. 108.

‡ *Comden Annal. Jac.* p. 77.

§ *Wilson's Life and Death of King James*.

16 Nov., 14. Jacobi regis, 1616, Sir George Clerke of the Crown, brought and delivered to me a writ of discharg. of my office of Chief Justice\*, which I reading, and finding it to be granted generally, *pro diversis causis*, &c. said, here is no cause whatever. After, I explained, no cause quidquid *in the writ* †.

Mem. Die Jovis the iii of May 1632, riding in the morning in Stoke, between 8 and 9 of the clocke, to take the aire, my horse under me had a strange tumble backward, and fell upon me (being about 80 years old), when my head lighted neare to sharpe shrubbes and the horse upon me. Yet, by the providence of Almighty God, though I was in the greatest danger, yet I had not the least hurt; nay, no hurt at all, for Almighty God saith by his prophet David, the Angel of the Lord tarrieth round about them that feare him and delivereth them—Et nomen dei benedictum, for it was his doinge.

### *Nativitas Edw. filii.*

1. Edw. Coke, primogenit. proles prædictorum Edw. et Brigittæ, natus fuit, apud Huntingfield, in Com. Suff., die Mercurii, viz. vicesimo septimo die Novembris, in festo Agricolæ Anno Dm. 1583, annoq. regni Dominæ Reginæ Elizabethæ vicesimo sexto, post horam sextam pomeridianam vix unum quartarium horæ post sextum ejusdem diei, (luna ad tunc in libra existent.) Susceptores sui ad fontem fuerunt Rogerus Touneshend de Reynham, Edwardus Paston Armiger, et Anna Bedingfield, Avia dicti Edwardi Coke filii, et

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\* From his office of Lord Chief Justice of the *King's Bench*.

† It is stated in the *Biographia Britannica* and in *Coke's Detection* (vol. 1, p. 92) that there was no truth in the reason alleged by Lord Chancellor *Ellesmere* for Sir *Edward Coke's* removal, viz. that he was too popular; but that the real cause was his refusal to comply with the wish of the King's favourite, Lord Viscount *Villiers* who wanted to be admitted patentee for life of the green wax office in the *King's Bench*; and it is evident from good authority that Sir *Edward* might have been restored if he would have given a bribe, but he nobly replied, *That as a judge ought not to take, so neither ought he to give a bribe*. It appears that he was suspended from his office on the 30th of June, and was succeeded by Sir *Henry Mountague*, on the 15th of November, 1616.

baptizatus fuit apud Huntingfield prædict., die Jovis, viz.<sup>o</sup>. quinto die Decembris Anno supradicto \*.

*Nativitas Annæ.*

2. Anna Coke, primogenita filia prædictorum Edw. et Brigittæ, nata fuit apud Huntingfield in Com. Suff., die lunæ, viz.<sup>o</sup>. primo die Marcii, in festo sancti Davidis Episcopi. Anno Dom 1584, in mane, viz.<sup>o</sup>. per unum quartarium, horæ ante horam septimam ante meridiem (luna adtunc in Cancer. existent.) Ejus susceptores fuerunt Johannes Clippesby, Ar. Dna. Anna Hoydon et Dna. Anna Gresham †.

4. Robertus Coke, secundus filius prædict. Edw. et Brigittæ, natus fuit apud Huntingfield, prædict. 27<sup>o</sup> Septemb. exist. die Mercurii An<sup>o</sup>. Dmi. 1587, regniq. Elizab. Reginae 29 in festo \* \* \* \* inter 11 et 12 horam dictæ meridiei (Luna adtunc existent in Sagitt.) baptizat. 4<sup>o</sup> Octobris, susceptores ejus Milo Corbet Armiger et Johannes Wentworth, gen. et Ratherma Rous.

3. Elizabeth Coke, 2<sup>a</sup> filia prædict. Edw. et Brigittæ nata fuit apud Huntingfield prædict. die Jovis circa horam duodecimam ejusdem diei in nocte in festo \* \* \* \* die Octobris Anno Dmi 1586, Regniq. Reginae Eliz. 28, baptizata in eadem nocte et paulo post obiit. Sed nativitas istius filiae scribi debet ante nativitatem prædict. Roberti.

5. Arthurus Coke. 3 filius præd. Edw. et Brigittæ natus fuit apud Huntingfield prædict. die Jovis in vigilia sci Timothei circa horam duodecimam in nocte ejusdem diei 22 die Augusti Anno Dmi. 1588, Regniq. Reg. Eliz. 30 (Luna in Cap. exist.) Baptizatus apud Huntingfield prædict. 27 die sequent. Suscept. ejus Arthurus Heveningham Miles, Franciscus Colby Armiger et Jo. Maplizden Archdiaconus Suff. et Anna Uxor Anthonii Wingfield Ar. §.

6. Johes Coke 4 filius prædict. Edw. et Brigittæ natus fuit apud Huntingfield prædict. die nono Maii, viz. die Sabbat. An<sup>o</sup>. Dom. 1580, Regniq. Eliz. 32<sup>o</sup>. circa horam quartam in Aurora (Luna in Scorp exist.) Baptizatus apud Huntingfield ejusdem Mensis. Susceptores ejus Reginaldus

\* This son died an infant.

† This daughter was married to *Ralph Sadler*, Esq. son and heir to Sir *Thomas Sadler*.

§ *Arthur* married *Elizabeth*, daughter and heiress of Sir *George Waldgrave*, by whom he had four daughters.

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Rous Ar. et Nicholaus Bohun et uxor  
Lany Gen.\*.

7. Henricus Coke, 5 filius prædict. Edw. et Brigitt. natus fuit apud Huntingfield prædict. 27 die Augusti, viz. die Veneris 1591 An\*. Reg. Reginæ Eliz. 33, unum quartarium horæ et quiddam amplius post septimam ante Meridiem in festo Rufini Martiris (Lana in Arie exist.) Baptizatus apud Huntingfield ultimo August. Susceptores ejus Henricus Gawdy Ar. Georgius Knightley Ar. et Eliz. Godsalue Viduat†.

8. Clemens Coke 6 filius prædict. Edw. et Brigitt. natus fuit apud Huntingfield, die Jovis 19 die Septembris 1594, annoq. Regni Reg. Eliz. 36 circa dimid. horæ post tertiam in Aurora in Vigilia sci Eustacii, et Baptizatus fuit 22 die ejusdem Mensis. Susceptores sui Clemens Paston, Johes Touneshend Robertus Gawdy et uxor Robti Foorth Arm.¶.

9. Brigitta Coke, 3 filia et nona proles prædict. Edw. et Brigitt. nata fuit apud Osterley in parochia de Heston in Com. Middlesex die lunæ circa dimidium horæ ante primam in nocte 27 die Decembris Anno Regni Reginæ Eliz. 39, annoq. Dom. 1596, in festo sci Johis et baptizatus fuit apud Osterley in Capella ibim quarto die Januarii: Susceptores ejus Nichus Hare Ar. Domna. Jana Touneshend relicta Rogeri Touneshend Militis et Anna Reade desponsata Mich. Stanhope Ar.

10. Thomas Septimus filius et decim. proles prædictor. Edw. et Brigittæ natus fuit apud Upton in parochia de Ham in Com. Essex et instanter post partum obiit, cujus Anima requiescit in pace, et Corpus sepelitur in Ecclesia

\* John resided at *Holkham*, and married *Meriel*, the daughter of *Anthony Wheatley*, Esq. by whom he had seven sons and as many daughters; but the inheritance descending to *John*, the youngest of them, and he dying unmarried, the estate came to the heirs of *Henry Coke*.

† *Henry* resided at *Thurrington*, in *Suffolk*, and married *Margaret*, daughter and heiress of *Edward Lovelace*, Esq. left issue *Richard Coke*, Esq. who, by *Mary*, daughter of Sir *John Rous*, Bart. left *Robert Coke*, Esq. who, by the death of *John Coke*, of *Holkham*, became possessed of that seat, and of the greatest part of the Lord Chief Justice's fortune.

¶ *Clement Coke*, Esq. married *Sarah*, daughter of *Alexander Redish*, Esq. of an ancient family in *Lancashire*, by whom he had two sons and two daughters; but his posterity became extinct in 1727.

de Ham in Com. Essex. Natus autem fuit die Martis 10 die Januarii an°. Dmi. 1597 Regniq. Reginæ Eliz. 40 circa horam quartam in Aurora.

Robertus Coke Miles filius hæres apparens-Edw. Coke Militis cepit in uxorem Theophilam filiam unicam Thomæ Berkely militis soli filii Henrici dom. Berkeley die Jovis 12 Augusti in festo sanct. Olave Anno Dom. 1613 apud ecclesiam in Berkeley prope Castrum de Berkeley. Dominus Berkeley dedit illam\*.

Brigitta Coke cepit in Virum Willm Berney ar. in festo \* \* \* 1613 apud Standon Com. Hertford †

1 Elizabeth primogenita filia prædict. Edward et Elizabeth. nata fuit apud Hatton House in Holborne in Com. Middlesex sext. die Augusti paulo ante horam nonam ante Meridiem an°. dmi 1599 regniq. Reginæ Eliz. 41 in festo transfigurationis Domini ‡.

Nota. Robertus Coke Armiger de Banco Hospicii Lincolnes Inne obiit in eodem hospicio 25 Nov. anno Dom. 1661 Anno 4 Regni Eliz. et sepelitur in Cancellæ Ecclesiæ Sci Andreæ in Holborne ubi instrumenta vocat. *Organes* nuper stabant. Vide the church booke of the same parrish, in hæc verba Anno Dmi. 1561, Robt. Coke, of Lincolne's Inne, was buried the 25th of November, being a Gentleman of Lincolne's Inne §.

Anna Bedingfield charissima mater dilectæ Uxoris meæ obiit apud Huntingfield die Veneris 20 die Junii An°. Dmi. 1595, et sepelitur apud Huntingfield.

Robtus. Coke filius et hæres apparens dicti Edw. creatus fuit in militem apud Whitehall die Dominico, 20 Decemb. 1607, in festo sci Julii circa horam duodecimam, Rege redeunte de Capella.

Brigitta primogenita filia Arthuri Cokenata fuit apud Hatcham in Com. Suff. 15°. Maii An°. Dm. 1606, die Lunæ circa horam 10 ante meridiem.

\* Robert left no issue by this wife, dying July 19, 1652, aged 67.

† It is stated in *Collins' Peerage* (vol. 4, p. 355) that Bridget was married to *William Skinner*, Esq. son and heir of Sir *Vincent Skinner*. This must be a mistake unless it was a second marriage.

‡ By his second marriage with the Lady *Elizabeth Hatton*, Sir *Edward Coke* had two daughters. *Elizabeth*, the eldest, died unmarried.

§ This *Robert Coke* was the father of Sir *Edward*, and died while the latter was at *Norwich* school. He was a barrister of great practice, and a benchor of *Lincoln's Inn*.

16 Die Septemb. Anno Dmi. 1596, Regniq̃ue Reginæ Eliz. 38 Edwardus filius meus primogenitus admissus fuit in Collegium scæ trinitatis in Alma Academia Cantabrigiæ; tutor ejus — Palmer sacræ Theologiæ Bachalarius, et ego et Uxor mea tradidimus carissimum primogenit. nostrum custodiæ et Curæ Tutoris sui.

Edwardus primogenitus filius Henrici Coke et Margarette Uxoris ejus (filie et Hæredis apparentis Ric. Lovelace Arm.) natus fuit apud Stoke die Jovis 3<sup>o</sup>. die Augusti paululum ante 9 in nocte ejusdem diei Anno Dm. 1620, et regni Jacobi 18 et baptizatus fuit apud Stoke die Jovis 17 Augusti, susceptores ejus Edw. Coke avus suus et Marmaducus Dayrel miles et Comitissa de Derby nup Uxor Cancellarii Angliæ. benedicat ei Dmnus. †.

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We have now concluded the whole of *Sir Edward Coke's* register, but on a leaf a little farther in the volume, we find a sort of title page to the Commentary, which also contains some notices relative to his promotions, with some Latin verses, which seem to have a peculiar reference to the object of his labours. We have literally transcribed it, as follows;—

EDWARDE COKE.

Serve God.

Ubi Mel, ibi Muscæ,  
Ubi Uber, ibi tuber,

Nec Prece  
Nec pretio.

Invigilate Viri, tacito nam tempora gressu  
Diffugiunt, nulloque sono convertitur annus.

Dum Vires annique sinunt, tolerate laborem  
Jam veniet tacito curva Senecta pede,

---

21 die Januarii An<sup>o</sup>. Dmi. 1571, I came to London first, and was admitted into Clifforde's Inne.—Admitted into the

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† This son must have died without issue, for *Richard* inherited his father's estates,

Temple 24 April An<sup>o</sup> 14 Eliz<sup>th</sup> —Called to the Bar 20 April An<sup>o</sup>. 21 Eliz<sup>th</sup>.

In le poin Sunday del Easter Term An<sup>o</sup>. 21 Elizabeth, An<sup>o</sup>. Dmi. 1579 elie Reader de Lien's Inne.

2d. Apiil 1586 elie Recorder de Norwiche.

August 1586 miss. in Commiss. de Peace.

23 Maii Anno 1613, Dominus Rex ex magno favore suo admisit me de privatâ Camerâ suâ, ombus. aliis qui non sunt de privato Consilio inhibitis iutroire in eandem Cameram.

30 January Anno 1606 pfectus. fui ad Statum et Gradum servientis ad Legem et eod. die constitutus fui Capitalis Justiciarius de Communi Banco,

Before we proceed to point out the various new readings in this edition of *Littleton*, it is necessary that we should state from Mr. *Hargrave's* address, what he has observed of the editions which he made use of in the execution of his laborious undertaking. And we must here correct an error into which we were very unintentionally led in our last Number. We there stated that this MS. had escaped the observation "of the two learned gentlemen to whom the profession is so much indebted for the unwearied attention and singular ability with which they executed the last edition of this invaluable work." We were led into this mistake from seeing no notice taken in the prefaces of either Mr. *Hargrave*, or Mr. *Butler*, of the original MS. being in existence: and we are happy in now having it in our power to apologize to those gentlemen for this unintentional mis-statement. The former gentleman, in a note which we have received from him, says "It so happens, that many years ago, when he was in the habit of occasionally going to the *British Museum*, Mr. *H.* inspected the very volume which has very properly attracted attention. The difficulty of reading the manuscript discouraged Mr. *H.* from attempting to derive advantage from it. But what is already published from it, namely, Lord *Coke's* own account in Latin of his birth and promotions, and other particulars concerning himself, is enough to shew, that the manuscript should have been more attended to by Mr. *H.*"

Mr. *Butler* has also personally informed the author of the account in a former Number, that several years ago he had the very MS. in his hands; but, from some doubts of its authenticity, arising from the cause stated in Mr. *Hargrave's* note, he was induced to pay little attention to it.

Mr. Hargrave states in his address, that "*Littleton's Tenures*, and Sir *Edw. Coke's Commentary*, will be printed from the second edition, that being generally esteemed the most correct one of the Commentary: but it will be occasionally compared with the first and other editions (i. e. of the Commentary) all of which have been procured for that purpose. The text of *Littleton* will be compared with the *Rohan* edition\*, which was that preferred by Sir *Edward Coke*,† and a still earlier one by *Letton* and *Mechlinia*,‡ which was printed in the life-time of *Littleton*, or within a year after his death, and has never yet been made use of in any edition of the Commentary. The editor is also provided with the curious editions of *Littleton* by *Pynson* and *Redman*,† which are the next in date to the *Rohan* edition. He is possessed too of an edition in 1534, by *Rastell*, and of most of the other editions of *Littleton*." Mr. Hargrave then proposes to give the various readings of four or five of the earliest editions of *Littleton*, which has never been attempted before.

In his preface, Mr. Butler observes, "It has not yet been settled, and perhaps cannot now be settled with any degree of precision, when the first edition of *Littleton's* work was printed. Sir *Edward Coke's* mistakes are pointed out in a note taken from the 12th edition to that part of his preface. §

\* Supposed by Lord *Coke* to have been revised by the author, and consequently esteemed the most correct.

There is no date to this edition; but my Lord *Coke* appears to be mistaken in supposing it the first edition.

‡ It would appear otherwise from his having actually used the edition of 1572, and interleaved it with his Commentary.

§ This edition has no date, but is supposed to have been printed in 1481. Dr. *Middleton* supposes this to have been the first edition, and to have been put to press by the author, who died in 1481. It is described in *Ames*, v. 1, p. 112.

† *Pynson* and *Redman* published editions of *Littleton* in 1525, 1526, and 1540.

§ Sir *Edward Coke* supposes the edition of *Littleton*, printed at *Rohan* by *William de Tailier*, at the instance of *Richard Pinson*, the printer of King *Henry VIII.* to have been the first, and consequently that the work was first published in the 24th year of *Henry VIII.* But Mr. *Butler* has proved this to be a mistake, for it was twice printed at *London* in 1528, once by *Richard Pinson*, and again by *Robert Redmayne*, and that was the 19th of *Henry VIII.* and from other circumstances it may certainly be concluded that it was printed some years before 1487.



Dr. *Middleton*, in his account of printing in *England*, conjectures the edition by *J. Lettou* and *W. Machlinia*, to have been printed in 1481, and that it is the first edition. This makes the printing of the book to have been within six or seven years after *Caxton's* introduction of the art into *England*, and within twenty-four years after the first invention of it. Dr. *Middleton's* conjecture is supported by the concurrent circumstance of the time when those printers appear to have been in partnership; and no other edition bears evidence of a prior title to antiquity. Another edition of nearly equal pretensions to precedence with the *Lettou* and *Machlinia* edition, has lately appeared from the library of the late *William Bayntun, Esq.* It has remained hitherto undescribed, and was probably unknown to all who have undertaken to notice the several editions of this book. At the end, it is said to be printed by *Machlinia* alone, then living near *Fleet Bridge*; from which, and other circumstances, it is clearly distinguishable from the former edition. The letter used in printing it is less rude than the letter used in the joint edition of *Lettou* and *Machlinia*, and the abbreviations are much less numerous. These circumstances afford some, though but a faint ground, to suppose it posterior in date to the former. Many editions of *Littleton*, in *French* and *English* only, have been published in small octavo, twelves, sixteens, and twenty-fours. They are all very inaccurate. The *French* edition in 1585, is the first in which the sections are numbered. An edition, in *French* and *English*, in double columns, with a table of the principal matters, was printed in duodecimo in 1671. Considering the estimation in which *Littleton's* work is held, and that it generally is the first work put into a student's hand, it is very singular that since the editions by *Lettou* and *Machlinia*, and the *Rohan* edition, no correct edition of it, without the Commentary, has yet been published. The reader will hear with pleasure that Mr. *Hargrave* has it in contemplation to favour the public with such an edition, and to print it in such a manner as to make it a typographical curiosity."

We have been induced to make these extracts from Mr. *Hargrave's* address, and Mr. *Butler's* preface, as introductory to the short and, we fear, imperfect account, which we shall attempt to give of the edition of *Littleton* by *Tottill*, in 1572, principally on account of what is stated as to Mr. *Hargrave's* intention to publish a new edition of the text of *Littleton*, as well as because we have some reason to hope that his learned successor, in the last edition of the Com-

mentary, will oblige the profession with such a work, in case Mr. *Hargrave* should relinquish his intention; and we should be extremely proud if any collation of this edition in 1572 should in the least degree facilitate the object of either of those learned gentlemen, It will be observed that the edition in question is not particularly noticed either by Mr. *Hargrave* or Mr. *Butler*.

We shall now proceed to give our readers some account of every thing which appears to us worthy of remark in this curious MS. The first is, the interleaved edition of *Littleton*, which Sir *Edward Coke* used when writing his Commentary. This is entitled to notice from the statement in the title page (which we have transcribed) because it points out the various interpolations and additions which have been at different times made to the original text of *Littleton*.

Les  
TENURES de Mon-  
sieur LITTLETON, ouesque  
certein cases per autres de  
puisne temps, queux cases trouueres  
signes ouesque cest signe ∞: . al com-  
mencement et al fine de chescun deux,  
au fine que ne poyes euz mispren-  
der pour les cases de Monsieur  
Littleton: pur quel incon-  
uenience, ils fuerent  
dernierment tol-  
les de cest  
liver,  
cy un foytz plus admotes  
al requeste des gentil  
hommes students  
en le ley D-en-  
gleterre

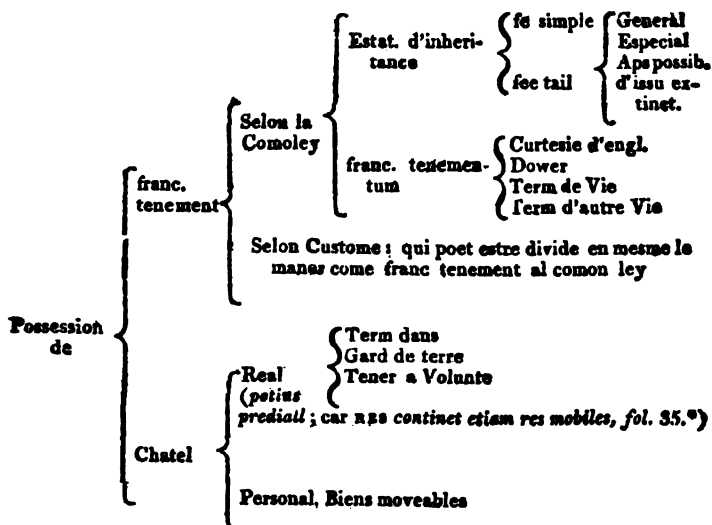
( : : : )

Cum privilegio 1572

Imprinted at London in Flete Strete, within Temple barre,  
at the signe of the Hand and Starre, by RYCHARD TOT-  
TILL.

The next particularity in this edition which we find worthy of remark is the *Figure of the Division of Possessions*; which, being different from the one published in Mr. Hargrave and Mr. Butler's edition, and containing a note of Sir Edward Coke's we have also transcribed. The note is printed in italics.

### A FIGURE of the Division of Possessions.



\* This short note is an additional proof of Coke's great attention to accuracy in the definition of terms.

**[To be continued.]**

We are much obliged to *Studens* for his reference to Lord *Bacon's* Reading on *Uses*, (p. 20, ed. 1785,) in which he seems to advert to Sir *Edward Coke's* reading on the same subject. We have not been yet able to discover whether Sir *Edward's* Readings have been published or not. If they were, it is at least very singular that no notice is taken of them in the *Bibliotheca Legum*, and that there is not a copy in the *British Museum*; at the same time, we think, there is much ingenuity in the remark made by *Studens*, that by using the phrase "*Coke in his reading doth say well,*" Lord *Bacon* may be supposed to allude to a published work, though it does not, indeed, necessarily follow that it was in print. But we have not yet been able to examine Sir *Edward's* Reading on fines, so as to say with certainty that Lord *Bacon* may not allude to some passage in that work, incidently applicable to the subject of the statute of uses.

## COMMUNICATION.

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CASE, with the Opinion of Mr. (afterwards LORD  
CHIEF BARON) COMYNS.

*Whether a Fine for Admission be due to a Lord of a Manor  
where the eldest Son and Heir of the deceased Tenant died  
before his Admittance.*

*Edmund Glenister*, Esq. died seised in fee of a copyhold estate held under the manor of *Kingston*, and the same descended upon his eldest son, *John*, a minor, who died before any court was holden for the said manor, or before he attained the age of twenty-one years; and, on his decease, *Edmund*, the second son, claims the estate by descent, and being now of age, is ready to take admittance to the same.

*Qu.* If a fine be due to the lord of the said manor for *John*, the eldest son, who so died a minor.

I am of opinion that a fine is due to the lord of the manor for every alteration of his tenant; but in this case, *John*, the son, dying before he was or could be admitted tenant, although by the descent of the copyhold upon him, he was entitled to have been admitted, yet since it was not through any default of his that he failed of being admitted, he never was tenant to the lord, so that the lord could charge him with a fine for want of admittance: but the lord losing his fine for *John's* admittance; may insist more strictly on a full fine for the admittance of the second son.

JOHN COMYNS.

*April 9, 1720.*

## BANKRUPTS,

*Declared in the London Gazette, from May 1st to  
June 30th, inclusive.*

[The Solicitors' Names, and Dates of the Gazette, are preceded  
by a Crotchet.]

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Arrowsmith James, now or late of Stockport, Cheshire, baker. [Bullivant, Bernard street, Brunswick square; and Mr. Baddeley, Stockport. May 5.

Ashby Wm. of Hog lane, Shoreditch, currier. [Benton, Swan yard, Blackman street, Southwark. May 26.

Ayscough James, of Leeds, woolstapler. [Lee, Leeds; Sykes and Knowles, Boswell court. May 29.

Ayscough George, of Gervaux, in the parish of East Whiton, York, woolstapler. [Lee, Leeds; and Sykes and Knowles, Boswell court. May 29.

Bland —, late of Isleham, Cambridge. [Evans, Ely; and Brown and Goto-bed, Norfolk street, Strand. April 28.

Brown Henry Wilson, of Cannon street, shoe manufacturer. [Warrand, Arundel street, Strand. May 8.

Black John Stanley, of Lamb's street Spital fields, London. [Store, Garlick hill. May 12.

Brain Stephen, of Pile Marsh, Gloucestershire, coal miner. [Blandford and Sweet, Inner Temple; and Charles Mellin, All Saints lane, Bristol. May 12.

Black John Henry, of Lamb street, Spital fields, oil and colourman. [Hoare, Garlick hill, Cheapside. May 15.

Bushell Wm. of Cannon street, grocer. [Lee, Three Crown court, Southwark. May 19.

Bunting John, of the whale Fishery, Little Hermitage street, Wapping, victualler. [Robinson, Prospect row, Bermondsey. May 19.

Briggs Henry, of Belvidere place, St. George's fields, horse dealer. [Benton, Swan yard, Blackman street. June 5.

Bally Stephen, of Bristol, tailor. [Boord and Ridpath, Bath. June 9.

Birkett George, Kendal, Westmoreland, brandy merchant. [Wright and Bovil, Chancery lane. June 9.

Bicknell John, Little Maddox street, Hanover square, dealer in artificial flowers. [Davis, Warwick street, Golden square. June 9.

Belcher John, of Lamb's Conduit street, merchant. [Falcon, Elm court, Temple. June 12.

Burgess James, now or late of Coventry street, Haymarket, military hatter. [Rosser, King's street, Holborn. June 16.

Beddine David, of the Back lane, in the parish of St. George in the East, Middlesex, upholster. [Urwin, High street, Shadwell. June 26.

Buckstone Wm. late of Bishopsgate street, London; haberdasher and hosier. Rosser, No. 32, King street, Holborn. June 26.

Corbett Thomas, of Friday street, warehouseman. [Walker, Coleman street. April 28.

## *Bankrupts.*

- Coombe, Wm. of Queen street, Cheapside, warehouseman. [Pallen, Fore street, Cripplegate. April 28.
- Cannan Michael, of Little Cheapside, Sun street, Middlesex, cheesemonger. [Edmunds, Hatton garden. May 5.
- Carriet Edward, of Louth, Lincolnshire, sadler. [Dyneley and Sons, Gray's Inn. May 8.
- Corbyn Thomas, of Cheapside, draper. [Scott, St. Mildred's court, Poultry. May 12.
- Coulsting Thomas, late of Bristol, cyder merchant. [Blandford and Sweet, Inner Temple; and Stephens, Bristol. May 19.
- Coot, Thomas, of Norwich, ironmonger. [Miller, Yarmouth; or Swaine and Stevens, Old Jewry. June 5.
- Chippendale Thomas, of St. Martin's lane, Upholsterer. Burgess, Curzon street, May fair. [June 9.
- Curling Edward, of Margate, hoyman. Lee, Sandwich, Kent; and Mawley, Titcham street, Finsbury square. June 12.
- Colville Thomas, and James Holmes, of Liverpool, merchant. [Stainstreet and Eden, Leigh street, Liverpool; and Windie, Bartlett's buildings, Holborn. June 16.
- Collison John, of Hitchin, Hertford, merchant. [Eade, Hitchin, Herts; and Townshead, Staples Inn. June 16.
- Dalrymple John, of Russel street, Bermondsey, Surrey, corn dealer and lighterman. [Broad, Union street, Southwark. May 12.
- Dymoke Robert, of Temple Mills, near Stratford, Essex, calico printer. [Humphreys, Tokenhouse yard. May 12.
- Drimmy Robert, of Great George street, Minorics, taylor. [Burt, Gould square, Crutched Friars. May 12.
- Dodgson Joseph, of Milthorpe, in the parish of Sandal Magna, Yorkshire, horse dealer. [Clarkson, Essex street, Strand; and Clarkson, Wakefield. May 15.
- Dutton John, of Catherine court, Tower hill, ship broker. [Ward, Dennetts, and Greaves. May 19.
- Debreit John, of Piccadilly, bookseller. [Dawson, Warwick street, Golden square. May 19.
- De la Charmette Francis David, of Laytonstone, Essex, and of Leadenhall street, London, merchant. [Gregson, Angel court, Throgmorton street. June 16.
- Edwards John, and John Manvell, of Caie Coch, Flint, manufacturers of earthenware. [Howard, Henrietta street, Covent garden. May 8.
- East Edward, late of St. George's Crescent, St. George's fields, Surrey, coach maker. [Cotkayne and Taylor, Lyon's Inn, Temple Bar. May 12.
- Esthill David, of Kingston upon Hull, draper. [Scott, St. Mildred's court, Poultry. June 9.
- Ellis Benjamin, late of Liverpool, liquor merchant. [Griffith, Lord street, Liverpool; and Windie, Bartlett's buildings, Holborn. June 23.
- Elliott Wm. late of Newington Causeway, Surrey, haberdasher. [Clutton, Union street, Borough. June 23.
- Ellis Benjamin, of Holt, Norfolk, vintner. [Reynolds, Great Yarmouth. June 23.
- Evans George, Hatfield place, Christ Church, Surrey, builder. [Godmon, Crescent, New Bridge street, Blackfriars. June 16.
- Finningley Edward, of Thorne, York, miller. [Benson, Thorne; and Rosser, Kirby street, Hatton garden. April 28.
- Figgins Thomas of Stockport, Cheshire, upholsterer. [Swale, New Boswell court; and Nabb, Manchester. May 8.
- Fletcher John, late of Warrington, Lancaster, and John Lodge, Habbersty, late of Lincoln's Inn, London, cotton spinners. [Blackstock, Temple; and Rawlison, Liverpool. May 29.

## *Bankrupts.*

**Field John**, of Watford, Herts, miller. [Edge, King's Bench Walk, Temple, May 2.

**Field George**, of Old Swan Stairs, Upper Thames street, merchant. [Willis, Wamford court, Throgmorton street. June 12.

**Fulcher Henry**, of Shoe lane, victualler. [Langley, Plumbtree street, Bloomsbury. June 23.

**Firth Thomas**, of Rothwell, York, hawker and pedlar. [Lee, Leeds; Batty, Chancery lane, London. June 26.

**Gwynn John**, of Alborne, Wilts, fustian maker. [Berry and King, Mead's street, Soho, London; and Hall, Hungerford, Berks. April 28.

**Greetham Simon**, of Bedale, Yorkshire, shopkeeper. [Dyneley and Sons, Gray's Inn; and Moreton, Bedale. May 5.

**Gover John**, and **James Hardrum**, of Rotherhithe, Surrey, patent gun carriage makers. [Wood, St. Bartholomew's Hospital. May 12.

**Glossop Benjamin**, late of Repham, Lincoln, beast jobber. [Foulkes, Bury place, Bloomsbury square. May 19.

**Godge Wm.** of Leicester square, linen draper. [Cannon, Leicester place, Leicester square. June 2.

**Good John**, of Sarum, Wilts, linen draper. [James, Gray's Inn square; and Cooke, Bristol.

**Gristler Thomas**, of New Bond street, auctioneer. [Harper, Vine street, Piccadilly. June 16.

**Hill Samuel**, of Adde street, merchant. [Sellers, Crown Office row, Temple April 28.

**Hewlett Wm. Vile**, of High street, Borough. [Vandercome, Bush lane, Cannon street. April 28.

**Molmeden, Sarah**, of Seven Oaks, Kent, miller. [Poole, Serjeant's Inn, Chancery lane; and Hutchins and Hilder, Seven Oaks, Kent. May 5.

**Hayes John**, of Maidstone, Kent, paper maker. [Deasy and Cope, Paper building, Temple; and Roffe and Scudamore, Maidstone. May 5.

**Hartley George**, of Colne, Lancaster, calico manufacturer. [Langham, Gray's Inn square; and Manchells, Colne. May 8.

**Hatfull James**, of Butcher row, Deptford, Kent, smith. [Eviatt and Rixon, Haydon square, Minoriea. May 12.

**Hutchinson Wm.** of Little East Cheap, merchant. [Ward, Dennetts, and Greaves, Henrietta street. May 12.

**Hardcastle John**, of Knottingley, Yorkshire, mercers. [Evans, Thaives Inn; and Beaver, Wakefield. May 15.

**Hargrave Wm.** of Kirton in Lindsey, Lincoln, stone mason. [Harvey and Robinson, Lincoln's Inn; and Atkinson, Lincoln. May 19.

**Hammond George**, of Canterbury, Upholsterer. [Kibbielwhite, Gray's Inn place. May 22.

**Henricks Ulick Anthony**, of Jeffries square, merchant. [Druce, Billiter square, Fenchurch street. May 22.

**Harre Wm.** and **Henry Suthmier**, of Denmark street, Ratcliffe Highway, sugar refiners. [Kayll, Tower Royal, London. May 29.

**Holmes Joseph Whiting**, of Portsea, Southampton, ironmonger. [Callaway, Portsmouth, Hants. June 19.

**Hall John**, late of Wapping High street, taylor. [Aliston, Swan street, Minoriea, June 16.

**Henderson Robert**, of Bridgewater square, Cripplegate, pocket book maker. [Sherwin, Great James street, Bedford row. June 16.

**Jones Isaac**, now or late of Westbury upon Trym, Gloucestershire, victualler. [Franker, Small street, Bristol; and Kinderley, Long, and Ince, Symond's Inn, Chancery lane. May 8.

**Jackson Edward**, of Edmonton, plumber. [Reardon, Corbett court, Gracechurch street. May 22.

## *Bankrupts.*

Jones Richard Hodgson, of Stourbridge, Worcester, clothier. [Hunt, Stourbridge; and Edmonds, Bishopsgate street Without. May 26.

Jarrat John, the younger, of Water lane, Tower street, broker. [Palmer and Tomlinson, Warnford court, Throgmorton street. June 26.

Knipe Bateman, of New Bond street, wig maker. [Dixon, Naffau street, Soho. May 12.

Kemp John Rice, late of Haslemere, Surrey, victualler. [Hector, Petersfield; and Wilshen, Gray's Inn square. May 26.

Key Thomas, of Bury St. Edmund's, Suffolk, linen draper. [Nicholls and Nettleship, Queen street, Cheapside. June 2.

Knight, Thomas, of Canterbury, shopkeeper. [Swain and Stevens, Old Jewry, June 16.

Levi Henry, late of Ramsgate, Kent, dealer, but now of the King's Bench prison. [Cockayne and Taylor, Lion's Inn, Temple Bar. May 5.

Lewis Lewis, late of Oxford street, grocer. [Lane, Red Lion square. May 12.

Leese Cleugh, of Leopard's court, Baldwin's gardens, leather lane, chemist. [Gregson, Angel court, Throgmorton street. May 12.

Lee Paul, late of South Shields, Durham, druggist. [Young, Newcastle; and Nelson, Maddox street, Hanover square. May 19.

Ludlow Wm. the younger, late of Andover, Southampton, wine merchant. [Bird, Andover; and Johnson and Caskell, Gray's Inn. May 19.

Ludlow Wm. Arnold, late of Arnold, Southampton, grocer. [Todd, Andover; and Bremridge, Inner Temple. May 19.

Ludlow Wm. now or late of Kilworth, Wilts, wine merchant. [King, Newbery. May 26.

Lewis John, of Tyndol, in the parish of Llanfrothan, Merioneth, drover. [Edmonds and Son, Lincoln's Inn; and Williams, Carnarvon. June 5.

Levington Thomas, St. Catherine's, slop seller. [Hurd, King's Bench Walks, Temple. June 16.

Mackenzie Matthew, of Fleet street, vintner. [Harman, Wine office court, Fleet street. June 2.

Macaulay Alexander, of London, merchant. [Williams and Rawlinson, Chatham place, Blackfriars. June 2.

Monk Wm. late of the Strand, truss maker. [Atkinson, Castle street, Falcon square. June 5.

Maclean Charles, Beaufort buildings, St. Martin in the Fields, merchant. [Davis, Essex street, Strand. June 16.

Nairne Thomas, of Wapping street, bread and biscuit baker. [Bart, Gould square, Crutched Friars. May 12.

Nicholls Samuel, the younger, of Bath, Somerset, upholsterer. [Pearsons, Pump court, Temple; and Taylor and English, Bath. June 16.

Oppenheim Lazarus, late of Henage lane, near Bevis Marks, merchant. Howarth, Jewry street. May 22.

Ogle John, of Pickwick, Wilts, Esq. and Walton William, of Liverpool, merchant, [Griffith, Lord street, Liverpool; and Windle, Bartlett's Buildings. June 23.

Pitts Wm. of Boston, Lincoln, sacking manufacturer. [Tunnard and Rogerson, Boston; and Allen and Exley, Furnival's Inn. April 28.

Parish James, Thomas Parish, James Stafford, and Thomas Hardwicke, of Halfway's End, Stafford, glass manufacturers. [Taylor, Southampton Buildings, Chancery lane, and Ravenhill, Wolverhampton. May 12.



## *Bankrupts.*

Potlard Wm. Thomas, of Aldenham, Hertford, farmer. [Hurle, Cloak lane. May 12.

Page John, late of St. Clement, Worcester, hop merchant. [Platt, Bride court, Bridge street; and Welles, Worcester. June 2.

Percival John, a prisoner in the King's Bench prison, stable keeper. [Burt, Gould square, Crutched Friars. June 5.

Plumleigh Thomas, of Bristol, grocer. [Kinderley and Co. Symond's Inn, Chancery lane; and Frankis, Small street, Bristol.

Parrott John, late of Ratcliffe Highway, victualler. [Holloway, Chancery lane. June 12.

Pickernell Jonathan, of Sunderland, Durham, dealer. [Parker Sunderland; and Atkinson and Morgan, Austin Friars. June 12.

Rankin Richard, late of Leftwick, Chester, and Wm. Okel, late of Liverpool, merchants. [Ainsworth, Middlewich; and Huxley, Temple. April 28.

Riding Grace, and Wm. Riding, of Andover, Southampton, linen drapers. [Fleet, Andover; and Kinderley and Ince, Symond's Inn, Chancery lane. May 8.

Robinson James, of Liverpool, silversmith. [Kearsey, Hare court, Temple; and Hanley, Liverpool. May 15.

Reynolds Charles, of Norwich, woollen draper. [Steward, Norwich. May 19.

Rowe Mark, of Truro, Cornwall, Shopkeeper. [James, Gray's Inn square, London; and Cornish, Bristol. May 22.

Riley Richard, now or late of Mansfield, Nottingham. [Robins, Gray's Inn place; and Vickers and Woodcock, Mansfield. May 26.

Rimmer Wm. of Ormskirk, Lancaster, innkeeper. [Broad, Southwark; and Wallworth, Liverpool. May 29.

Roberts Richard, of St. Paul's Church yard, victualler. [Holloway, Chancery lane. June 2.

Sandback Wm. of Northwich, Cheshire, shopkeeper. [Cheshyre and Walker, Manchester. May 5.

Scott John and Charles Stewart Bisset, of Liverpool, liquor merchants. [Lace and Hassal, Liverpool. May 15.

Sanderson Robert, of Palsgrave place, money scrivener. [Constable, Symond's Inn, Chancery lane. May 19.

Saxton John Thacker, late of Chesterfield, Derby, printer. [Thomas, Chesterfield. May 26.

Southcote John Henry, late of Stoke Fleming, Devon, lime merchant. [Taunton, Temple; and Prideaux, Knightsbridge, Devon. May 26.

Stockley Wm. of the Haymarket, shoeing smith. [Evitt and Rixon, Haydon square, Minories. June 2.

Smith Robert, of Timberland, Lincoln, grocer. [Luckett, Basinghall street, June 9.

Strange Edward Hilder, of Frant, Sussex, grocer. [Blandford and Sweet, King's Bench Walks, Temple, and Jones, Tunbridge Wells, June 12.

Smith John, of Poland street, Westminster, merchant. [Rice, Dufour's place, Broad street, Golden square.

Staymaker Richard, now or late of Abingdon, Berks, carrier. [Morland, Abingdon; and Blagrove, Salisbury street, Strand. June 26.

Tod George, of King's Road, Sloane square, surveyor. [Richardson. April 28.

Twycross Robert Harcourt, of Brook street, Holborn, jeweller. [Mayhew. May 12.

Thompson Robert, of South Shields, Durham, mast maker. [Hall and Bell, Bow lane, Cheapside; and Bainbridge, South Shields. June 9.

breadgold John, of Portsea, Southampton, cabinet maker. [Tilbury and Bedford, Bedford row. June 30.

Wilmer Mackett Willett, of Rushforth hall, near Bingley, Yorkshire, cotton spinner. Cheshyre and Walker, Manchester; and Ellis, Cursitor street. May 5.

## *Bankrupts.*

- Wootton Charles**, of Bath, Somersetshire, milliner. [Cruttwell, Westgate buildings, Bath. May 4.  
**Witherington**, of Ross, Herefordshire, Vintner. [James, Gray's Inn square; and Tanner, Bristol. May 8.  
**White Joseph Smith**, late of Witham, Essex, miller. [Lawrance, Malden, Essex; and Tyrrell and Frances, Guildhall. May 15.  
**Webb John and Thomas Webb**, of Coventry street, silk dyers. [Foulkes, Bury place, Bloomsbury square. May 28.  
**Winder Jeremiah**, of Chosley, Lancaster, timber merchant. [Blackstock, Temple; and Rowlinson, Liverpool. May 26.  
**Warner John**, of Elmden, Essex, shopkeeper. [Cutting, Bartlett's buildings, Holborn; and Walton, Saffren Walden, Essex. May 26.  
**Wren Robert**, late of Petersfield, Southampton, fellmonger. [Hector, Petersfield; and Wilshe, Gray's Inn square. May 29.  
**Witherell John**, of Long Acre, coachmaker. [King, Mead street, Soho; and Hyatt and Maskell, Shepton Mallet. May 29.  
**Watson Samuel**, of Blakeney, Norfolk, corn merchant. [Wright and Bovill, Chancery lane. June 5.  
**Williamson Robert**, of Rosk hill, York, farmer. [Dyneley and Sons, Gray's Inn; and Morton, Bedall. June 12.  
**Williams Thomas Smith**, of Mincing lane, ship broker. [Swaine and Setvens, Old Jewry. June 12.  
**Wood Thomas**, of Manchester, and Jackson William, of Basingwold, York, cotton spinners. [Hurd, King's Bench Walk, Temple; and Parting, Manchester. June 23.  
**Walker Edmund**, of Kidderminster, Worcester, grocer. [Batters and Martin, Furnival's Inn; and Lister, Kidderminster. June 23.  
**White John**, of Great Russell street, Covent garden, plate worker. [Martin, Vintner's Hall, Upper Thames street. June 23.  
**Wendover Nicholas**, of Epsom, Walton Wm. and Ogle John, *vide* Ogle.  
**Waters James**, of South End, Lewisham, Kent, victualler. [Poole, Serjeant's Inn, Chancery lane; and Hutchins and Hilder, Seven Oaks, Kent. June 16.  
**Wood Thomas**, Ross, Herefordshire, wooldrapier. [Harvey, Ross; and Hill, Meredith, and Robins, Gray's Inn. June 16.  
**Wright John**, late of Smithy Brook, Lancaster, carrier. [Dewhurst, Preston; and Burry, No. 3, Holborn court, Gray's Inn road. June 16.

ACCOUNT AND ANALYSIS  
OF  
NEW LAW BOOKS,  
WITH OCCASIONAL REMARKS.

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ARTICLE VIII.—*A COMPENDIUM of the STATUTE LAWS and REGULATIONS of the COURT of ADMIRALTY, relative to Ships of War, Privateers, Prizes, Re-captures, and Prize Money. With an Appendix of Notes, Precedents, &c. By THOMAS HARTWELL HORNE.*—W. CLARKE and SONS, Portugal Street. 1803.—12mo. pp. 168.

MR. HORNE informs us, in his preface, that his object is to exhibit a concise view of the *existing* statutes, laws, and regulations of the court of Admiralty, concerning ships of war, privateers, prizes, and other matters connected with that subject. And “although the elaborate works of Mr. *Lee*, the earl of *Liverpool*, *M. D’Martens*, and Mr. (Dr, we believe) *Browne* might seem to render any farther work on this head unnecessary; yet as they are too intimately blended with the law of nations to contain a compendium of British prize law, the editor was induced to arrange the sheets here submitted to the public, in order to supply the deficiency.” Mr. *Horne* adds that “perspicuity and brevity, are the objects he has chiefly kept in view that he might be enabled to comprize all the operative words of the laws and regulations now in force respecting prizes.”

The work commences with a disquisition on the origin of letters of marque, after which the author proceeds to consider the conduct of ships of war and privateers at sea, as well before as after capture, recaptures, legal proceedings, fees of office, appeals, &c. The regulations concerning agents and prize-money, prize-vessels, and prize-goods, and, finally, the rewards of ships of war and privateers. An appendix is added containing several necessary forms and notes of decided cases illustrative of positions advanced in the body of the work.

Mr. *Horne* appears to us, to have very accurately executed what he professed, and we have no doubt that this *Compendium* will be found useful by those who practise in the court

of admiralty, and also by those who are concerned in the capture of prizes.

The subject is indeed of great importance to those whom it concerns, and Mr. *Horne* has, we think, rendered them the more service by preparing his *Compendium* in a size and form so convenient that all who are concerned in shipping may readily acquire information upon the points most useful to be known concerning the law of prize in British courts of admiralty. We have only to add, that this work was printed before the late decision, in the cases of *Lord Nelson v. Tucker* and *Lord Keith v. Pringle*\* concerning the chief flag officers' right to the one-eighth share of prize taken by his squadron which has been held to belong to the *effective present acting* flag officer on the station under the fourth article of the king's proclamation 1797† and not to the superior officer nominally on the station *returning home* and leaving the ships behind to act under another command, notwithstanding the prizes then in question were taken by an officer dispatched from the fleet, by orders of the admiral returning home, and before that officer could receive orders from the admiral left behind, and while the former continued to retain the title of admiral on that station with the pay table, money, &c.

\* Vide *Law Journal*, vol. iii. p. 111.

† *Horne's Compendium*, p. 82. 85.

## *Sir Edward Coke's Reading on the Statute of Uses.*

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WE are now enabled to state from the best authority that it is most probable that this reading has never yet been published. The expression in Lord *Bacon's Reading* alluded to by *Studens* and from which he inferred that it had been published, we are now convinced, upon a full examination of that excellent work, is merely accidental, and does not warrant the inference which he has drawn from it. In another place\* Lord *Bacon* notices the reading of Sir *Edward Coke*, in the past tense, as follows: "master attorney," (evidently meaning *Coke*) "who read upon this statute, said well: so that it seems the authority of Lord *Bacon* is perfectly indifferent, as to the publication of the reading, though it is decisive as to the fact of *Coke's* having read upon the statute of uses. In addition to this we have since been informed, that amongst the collections belonging to Mr. *Hargrave*, who has several volumes of manuscript readings, there is a note of some part of Lord *Coke's* Reading on the Statute of Uses, but we are also informed, and it must be matter of regret to all, that it is but a mere scrap too imperfect to satisfy the wishes of those who know how to value the labours of such men as *Bacon* and *Coke*. We are sorry also to add that Mr. *Hargrave* has never seen a complete copy of *Coke's* Readings on Uses, and we have not as yet been able to ascertain that it exists at present in any of the public libraries, or private collections of manuscripts.†

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\* P. 5, edit. 1785.

† We shall be happy to receive information from any of our intelligent correspondents, concerning such remains in MS. of the unpublished works of eminent lawyers, or curious tracts, as may be within their knowledge. It is a part of the plan of this work to afford an opportunity for the publication of those things which though curious and interesting it would be hazardous and unprofitable to publish in another form.

## *Bankrupts.*

### H

- Hemus William, of Merthyr Tydvil, Glamorganshire, brickmaker. [Jenkins and Co. New Inn ; and Wilkins, Merthyr Tydvil. July 7.
- Holmes J. W. of Portsea, Southampton, Ironmonger. [Callaway, Portsmouth. July 10.
- Hillier William, of Halling, Kent, victualler. [Nelson, Falsgrave place, Temple bar. July 10.
- Hahn Jonas Charleson, of Crutched friars, London, ship and insurance broker. [Evans, Birchin lane, London. July 14.
- Harvey J. of Birmingham, wine merchant. [Johnson, Inner Temple, London. July 17.
- Home, P. and P. Hunter, of Throgmorton street, merchants. [Willis, Wandford court, Throgmorton street, July 17.
- Heck A. of Gravesend, carpenter. [Lange, Great Prescot street, Goodman's fields, London. July 28.
- Holbrow J. and W. Holbrow, Avening, Gloucestershire, dealers. [Chinn, Minchinhampton, and Bennet, Dean's court, St. Paul's. August 3.
- Hill W. Liverpool, ship builder, [Blackstock, St. Mildred's court, Poultry ; and Murrow, Liverpool. August 3.
- Hodgson John, of Birmingham, merchant. [Egerton, Gray's Inn, London ; and Spurrer, Birmingham. August 7.
- Hilton William, of Birchin lane, London, druggist and chemist. [Oakley, New London street, Fenchurch street. August 7.
- Haw Thomas, of Stockton, Durham, ship builder. [Raisbeck, Stockton. August 18.
- Hallfield John, of Messingham, Lincolnshire, beast jobber. [Fowler, Ashby, Lincolnshire. August 21.
- Harman James, of Great Russel street, Bloomsbury, haberdasher. [Farrar, Steadman, and Wall, Bread street hill. August 25.
- Hancock Charles, of Horncastle, Lincolnshire, Tailor. [Walker, Spilsby ; Ellis, Cursitor street, London. August 31.
- Hutchings Henry, the younger, of High Holborn ; baker. [Flashman, Ely place Holborn. August 31.

### J

- Jarritt J. of Bristol, cabinet maker. [Bennet, Dean's court, St. Paul's, London. July 10.
- Jones R. of Manchester, victualler. [Hurd, Temple. July 24.

### K

- Kershaw James and William Kershaw, of Halifax, Yorkshire, merchants. [Allen and Co. Farnival's Inn ; and Howarth and Co. Ripponden, Yorkshire. July 7.
- Keene D. Aldersgate street, cabinet maker. [Flashman, Ely place, Holborn, London. July 28.

### L

- Lichgarry Samuel, and Matthew Dunsford, of Basinghall street, London, dealers. [Walton, Girdlers' hall. July 14.
- Lawrence R. of New Windsor, Berks, bricklayer. [Bartun, Symmond's Inn, London. July 17.
- Linley Joseph, of Oxford street, hesier. [Stokes, Upper James street, Golden square. August 25.

## *Bankrupts.*

- Leighton W. of Newcastle upon Tyne, innkeeper. [Wortham and Stephenson, Castle street, Holborn. July 28.  
Lawley W. of Cleobury Mortimer, Salop, timber merchant. [Griffiths, Great James street, London. August 11.  
Leeson T. of Packwood, Warwickshire, mercer. [Smart and Thomas, Staple Inn, London. August 18.  
Lardner John, of Oxford street, Marylebone, ironmonger. [Richardson, Monument yard. August 25.

## M

- Marsh Robert, of the Old Bailey, oilman. [Smith and Co. Chapter-house, St. Paul's Church yard, London. July 7.  
Metford William, of Temple street, Bristol, butcher. [Blandford and Co. Temple ; and Mellin, Bristol. July 7.  
Mills James, of Portsea, Southampton, grocer. [Lowe, James street, Portsea, and Willshen, Salisbury street, Strand, London. July 14.  
Mount Richard, of Canterbury, hop merchant. [Reynolds, Folkestone, Kent. August 25.

## N

- Newton R. of Manchester, cotton manufacturer. [Ellis, Cursitor street, London. July 10.  
Nodin J. of Water lane, merchant and broker. [Gregson, Angel court, Throgmorton street. August 11.

## O

- Owen Thomas, of Walsal, Staffordshire. [Price, Worcester ; and Barker, Gray's Inn, London. August 14.  
Osborne James, of Oxford, sadler. [Walsh, Oxford ; and Townsend, Staple Inn, London. August 14.  
Owen Edward, of Cumming, Plymouth dock, shopkeeper. [Morgan, Bristol. August 25.

## P

- Price Thomas, of Redcross street, Southwark, upholsterer and cabinet maker. [Berry, Walbrook. July 14.  
Pryer William, Hackney, stock broker. [Bugg, New Broad street, London. July 31.  
Pugh Edward, Franklin's yard, near the Circus, Surrey, oilman [Dawes, Angel court, Throgmorton street. August 3.  
Porter W. of Great Driffield, Yorkshire, grocer and draper. [Ellis, Cursitor street, London. August 11.  
Palmer F. P. of Worcester, money scrivener. [Smart and Thomas, Staple Inn, London. August 11.  
Price M. of Hereford, milliner and haberdasher. [Davies, Lothbury, London. August 18.

## R

- Radcliffe N. of Oldham, Lancashire, cotton spinner. [Ellis, cursitor street, London. July 28.  
Riley E. Strand, dealer in music and musical instruments. [Orrel, Windley street, Oxford street, London. July 31.  
Row Thomas, Bath, Butcher. [Sheppard and Co. Bedford row and Sheppard, Bath. August 3.

## *Bankrupts.*

### S

- Stanforth George, of Beverley, Yorkshire, draper. [Ellis, Curator street, London. July 10.
- Shaw John, of Newgate street, London, linen draper. [Alderson, North street, City road, London. July 14.
- Sazonoff S. of Apollo buildings, Wajworth, merchant. [Willett and Annesley, Finsbury square. July 28.
- Sayers Joseph, Charles street, cavendish square, shoe maker, [Orrel, Winsley street, Oxford street. August 3.
- Scougall George, of Blackheath, Kent, merchant. [Gregson, Angel court, Throgmorton street, London. August 11.
- Smith James, of Pemberton, Lancashire, bleacher. [Bretherton, Wigan; and Blackstock, St. Mildred's court, Poultry, London. August 14.
- Stork John, Thomas Whitby, and Matthew Bouterill, of Great Driffield, Yorkshire, merchants. [Abbot, Old Broad street. August 21.
- Stephenson Charles, of Parliament street, Westminster, stationer. [Hulme, Brunswick square. August 25.
- Smith Robert, of Williton, Somerset. [Clarke, Chard, and King, Took's court, Chancery lane. August 31.

### T

- Turner Thomas, of Birmingham, button maker. [Egerton, Gray's Inn square, London. July 10.
- Thompson Robert, Sheffield, Yorkshire, cutter. [Biggs, Hatton garden; and Rodgers, Sheffield. August 3.
- Tripp Henry, of Bristol, taylor. [James, Gray's Inn, London; and Martin, Bristol. August 7.
- Towne W. of Deptford, Surrey, clerk, schoolmaster, and bookseller. [Drew, Bermondsey street, Southwark. August 11.
- Treadle T. of Penrith, Cumberland, innkeeper. [Lowndes and Lambert, Red Lion square, London. August 18.
- Tuton J. and J. Warwick; of Leeds, merchants. [Lambert, Hatton garden, London. August 18.
- Thomas Thomas, and Henry Cameron, of Birmingham, factors. [Burnish, Birmingham. August 25.

### W

- Wain J. and T. Agg, of Basinghall street, clothiers. [Alderson, North street, City road, London. July 10.
- Whittle Thomas, of Wheelock, Lancashire, muslin manufacturer. [Duckworth, and Chippendale, Manchester. July 14.
- Whittingham C. of Warrington forge, Cheshire, ironmaster. [Hurley, Temple. July 24.
- Wells J. and T. Smith, of Leadenhall street, hatters. [Williams, Upper John street, Fitzroy square, London. July 28.
- Wilson W. late of the Coal Exchange, coal factor, [Raine, No. 28, Mark lane, London. July 28.
- Walters J. of Cornhill, merber. [Barrow, Forbes, and Hancock, Basinghall street, London. July 28.
- Worthington George, of Chorlton row, Manchester, porter brewer. [Ellis, Curator street; and Hewitt, Manchester. August 3.
- Wheatley L. sen. of Bedworth, Warwickshire, butcher. [Nicholls, Tavistock place, Tavistock square, London. August 21.
- Watt D. of Bristol, cordwainer. [James, Gray's Inn square, London. Aug. 12.
- Whitworth James, of Alford, Lincolnshire, brandy merchant. [Allen and Exley, Furnival's Inn, London. August 25.



ACCOUNT AND ANALYSIS  
OF  
NEW LAW BOOKS,  
WITH OCCASIONAL REMARKS.

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ARTICLE IX.—*A DIGESTED INDEX to the MODERN REPORTS of the Courts of COMMON LAW, previous to the commencement of the Term reports, including Wm. Blackstone, Burrow, Cowper, Douglas, Loft, Lord Raymond, Salkeld, Strange, Willis, and Wilson. By JOHN ILDEBERTON BURN, Esq.—BUTTERWORTH, Fleet-street. 1804. 1 volume Octavo.*

THE nature of this work will sufficiently appear from the following account of it given by the author, in the ADVERTISEMENT which he has prefixed to it by way of preface.

“ The following pages comprise, in a comparatively small compass, the substance of twenty-four volumes of reports. But the nature of the undertaking will best evince the labour that has been necessary to complete it.

“ The cases are arranged on a plan similar to that of *Mr. Tomlins' Digest of the Term Reports*, with distinct references to the reporters: for many of them are reported by two or three different authors. Under each head, therefore, may be found by a very short and easy reference, the whole of the cases that have been reported for nearly a century past, on that particular subject; so that the labour of the student may thus be much shortened, at the same time, that it will be rendered more certain of attaining the object in view.

“ So many reporters, and each pursuing a different mode of arrangement, however judicious separately considered, were sure to perplex the mind of any one who had occasion to consult many of them at a time. It is presumed that the arrangement of the whole, upon one systematic plan, will obviate much of that perplexity.

“ This Digest offers the latter advantages; and it is hoped, with tolerable correctness, particularly in the references.

" A person consulting a work of this nature, can scarcely be supposed to do so, without referring also from it to the reports at large; therefore, in case there should be a defective abridgment of any of them (which the Editor is not aware of,) no great evil would ensue. This is not meant to apologize for inaccuracies, or avert a just criticism on his book, but more fully to satisfy those who consult it. His aim has been to give the leading point in each case correctly; when more than one point of law has arisen, they are referred to in different parts of the work, under correspondent titles.

" In so large an undertaking, often necessarily interrupted by professional duties, some errors may be expected, notwithstanding all the care taken to avoid them. The Editor, therefore, solicits the indulgence of his readers, for such as may have escaped his notice; and submits his labours to their candour and liberality."

As this is a fair statement of the nature of the work, we feel neither able nor inclined to offer any further criticism upon it, than to say that we think such a *compilation* is useful, and that having had some occasion to use it, we have found the references sufficiently correct. If the points, as stated by Mr. *Burn*, are not always so precise and satisfactory as those of Mr. *Tomlins's Index*, it should be considered that the latter gentleman, extracted them from the margin of the *Term Reports*, and that the marginal references to the previous reporters are not always so full or so accurate and precise, and it can scarcely be expected that in such a work Mr. *Burn*, at all times consulted the report, and extracted the point himself.\*

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ARTICLE X.—A TREATISE of the LAW relative to MERCHANT SHIPS and SEAMEN; in four parts; I. Of the Owners of Merchant Ships; II. Of the Persons employed in the Navigation thereof; III. Of the Carriage of goods therein; IV. Of the Wages of Merchant Seamen. By CHARLES ABBOTT, of the Inner Temple, Barrister at Law. The second Edition, with additions.—BROOKS and CLARKE, Bell-yard, Temple Bar; and J. BUTTERWORTH, Fleet-street. 1804. 1 volume Octavo.

THE maritime commerce of this country, is in every point of view an object of the greatest importance. From it the nation chiefly draws that wealth, which not only supplies

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\* We wish Mr. *Burn* had included *Espinasse, Peak, Anstruther* and *Forrest*.

its government with the means of supporting its high rank as a maritime power, but which also, from the natural tendency of commercial competition to run into various channels and preserve a sort of equilibrium, is more generally diffused amongst the people at large, and displays itself in producing more universal ease and affluence, than is to be found in most other nations of superior natural wealth, but of less commercial enterprize. Commerce also, by introducing new sources of wealth, and new relations of property, differing materially from those which formed the great objects of the care of the legislature under the feudal system, has given rise to new legislative regulations concerning it; and it is observable that, being framed upon a view of transactions, in which other nations have a mutual interest and a mutual intercourse, there is more of similarity in the commercial laws of the different nations of Europe, than is to be found either among their criminal codes, or their rules of property concerning land and the rights to immoveable things. This similarity is the more close, as a great part of what may be called our maritime law is not the arbitrary institution of legislative authority, but is more often fixed by the judgment of courts of law, founded upon a fair consideration of the nature of certain general contracts, customary amongst all commercial nations, and, therefore, necessarily bearing a strong analogy to each other. Hence it is that the laws of Europe, concerning bills of exchange, insurance, bottomry, and respondentia, freight, and other contracts between masters, mariners, owners of ships, and merchants, may be considered as one grand code of customary and public law, differing only in particulars, but still being in general principles the same.

We have made these observations on commercial law in general, in order to introduce a remark, with respect to the nature of the present work, which we hope will be felt by its author, as a further incitement to his laudable exertion, in the occasional correction of it, and the bringing it to that perfection at which he aims; namely, that, from the nature of the subject, it is probable it may not only be useful to the merchants as well as the lawyers of this country, but together with the Treatises of Mr. *Park*, and Serjeant *Marshall* on insurance, may be consulted by foreign merchants and foreign jurists, for information concerning the laws of this country, in matters of the highest importance to themselves. For this reason, amongst others, we highly approve of the plan of the work, which, instead of being a dry uninteresting digest of statutes and cases, cut out and pasted

together, from old abridgments, and the indexes and marginal notes of reporters, is to say the least, a fair attempt at something like a regular and well written Treatise, which may be read without fatigue and disgust. An attempt which we always view with pleasure, and on which we shall be always ready to bestow our due share of praise, even though it should be less successful than in the present instance, since, as the author justly says, "he would have spared himself much both of time and labour, if he had copied more, and abridged less." Concerning this work in particular, it is hardly necessary that we should give an opinion, since the public has sanctioned it, by requiring a second edition in a short time, but we are ready to join our approbation amongst the rest, by saying, that it is highly creditable to Mr. Abbott's abilities, and evinces great marks of professional judgment and accuracy of discrimination.

The work is arranged under the following heads: PART THE FIRST, *Of the owners of merchants ships; of the owners of ships in general; of property in British ships; of part owners.* PART THE SECOND, *Of the persons employed in the navigation of merchant ships; of the qualifications of the master and mariners; of the authority of the master with regard to the employment of the ship; of the authority of the master with regard to repairs, and other necessities furnished to the ship; of the behaviour of the master and mariners; of pilots.* PART THE THIRD, *Of the carriage of goods in merchant ships; of the contract of affreightment by charter-party; of the contract for conveyance of merchandize in a general ship; of the general duties of the master and owners; of the causes which excuse the masters and owners; of the limitation of the responsibility of the owners; of the general duties of the merchant; of the payment of the freight; of general or gross average; of stoppage in transitu; of salvage; of the dissolution of contracts for the carriage of goods in merchant ships.* PART THE FOURTH, *Of the wages of merchant seamen; of the hiring of seamen; of the earning and payment of wages; of the loss and forfeiture of wages; of proceedings to obtain the payment of wages.* APPENDIX, *The form of a bottomry bond; the form of a bottomry bill; the form of a respondentia bond, on a voyage to the East Indies; the form of an instrument of hypothecation of cargo and ship; the form of articles of agreement between the master and mariners.*

In the addenda, Mr. Abbott has given two short reports of the judgment in the cases of *Beale v. Thompson*, and *Newman v. Walters*, as taken by himself, no other Reports

being in print at the time of the publication of his work. The report of the former is remarkable for its conciseness, at the same time that it omits nothing material. It reminds us of the *pithiness* and brevity of some of the old reports, which of late, have perhaps been too little imitated.

"The recent determinations, that have taken place in the courts at *Westminster*," says Mr. *Abbott*, in his advertisement to this edition, "together with a few decisions at *nisi prius*, and such of the judgments of the courts of admiralty, as have been reported since the first publication of this book, relating to the subjects here treated of, are introduced into the present volume. These additions have unavoidably disturbed the order of the paging, and it was found impossible to preserve the numeration of the first edition, with marginal references, without great confusion. But the numeration of the chapters and sections remain unchanged; and by referring to them, the corresponding parts of both editions may easily be found; when a new section is introduced into the body of a chapter, it is distinguished by the addition of a letter, to the number of the preceding section."

Mr. *Abbott*, has taken great pains to acquire the proper information concerning the maritime codes of other nations in *Europe*; and on the *French* law often quotes *Valin* and *Pothier*, with the highest encomiums upon their talents. In this he will doubtless be joined by all who have studied their works; but when speaking of the laws of *France*, we have been rather surprised to find our lawyers, of late, recurring to authorities under the ancient monarchy, without much attention to the changes which have occurred, during the various revolutions of modern times. It must be confessed, however, that the changes of the government have left many of their laws unaltered, or have brought them back, after some revolutions, nearly to their former state; but we have met with a digest drawn up by the direction, and under the consular authority of *Bonaparte*, entitled *Code Commerciale*, which gives the most recent information on several important points discussed in the work before us, besides that it contains a complete sketch of a system of law on bills of exchange, partnership, insurance, and affreightment.\* This

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\* We shall be glad to be informed by any of our readers, if this code, or any other in its stead, has received the sanction of the existing

*Code* Mr. *Abbott* does not mention that he has seen, but probably it will in future deserve his attention.

We shall conclude by extracting a passage, which we have selected, because, while it shews considerable accuracy in the statement of the decisions of the court, in an abridged and connected form of narrative, it contains also one of those studied elegancies of style, of which there are but very few, but which perhaps some friendly *Aristarchus* may advise him to throw aside as *falsa ornamenta*, meretricious decorations not strictly becoming the simplicity of a writer on subjects of law, and ill suiting with the general tenor of our author's work.

“ The bill of lading, in all its usual forms, contains the word *assigns*, and as in point of practice it frequently happens that the consignee, having received the bills of lading, before the arrival of the goods, sells the goods upon the sea, and assigns the bill of lading for a valuable consideration, to a third person, who is wholly ignorant of the nature or terms of the consignment, and does not know that the consignee is not absolutely entitled to receive or dispose of the goods, a very important question of law has arisen upon the right of the consignor to countermand the delivery, under such circumstances, as between him and the assignee of the bill of lading. This question depends upon another, namely, whether a bill of lading is, by law, an instrument assignable and negotiable in the same manner as a bill of exchange, which is by the custom of merchants, *adopted* into and made part of the common law, or as a promissory note, which is made so by statute; and of each of which, an assignment fairly made, and for a valuable consideration, gives to the assignee the power to enforce performance, in many cases in which the assignor himself could not enforce it. Of the frequency of the practice to assign bills of lading among merchants, and the conveniency of the practice, there is no doubt; but not every mercantile practice of frequent use, and even of general convenience, is or ought to become in all its consequences a part of the law of the land;

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government; whether it is yet become the law of *France* or not the circumstance of its being drawn up by a committee, consisting of her most able jurists, and under the direction of the First Consul, now the first Emperor, renders it an object of great importance to be consulted by those who desire to be acquainted with commercial law, as it may, at least, tend to elucidate some points.

for if such a rule were adopted, the law must in many cases depart from its own principles, and vary with the varying fashions of the times; nevertheless the law does adopt into its own bosom many of the ancient customs and usages of merchants, and stretch forth its arm to assert and maintain them, when they are found consonant to legal reason and legal wisdom, and most especially when they are calculated to promote honesty and prevent fraud. And upon the subject now under consideration, the question is, what extent of legal right, the fact of assignment confers upon the assignee. The earliest mention of this subject in our law books, is in the case of *Evans v. Marlett*,\* in which Holt, C. J. said, "the consignee of a bill of lading, has such a property that he may assign it over." Mr. Abbott then proceeds very ably to state the case, and after noticing *Lickbarrow v. Mason*,† and *Solomons v. Nissen*,‡ says, "the second writ of error in the former case was abandoned, and it is now the general opinion among lawyers, that such an assignment does give an absolute right, and property to the assignee, indefeasible by any claim on the part of the consignor. At the second trial of this cause, it was the opinion of the jury, and was stated to be so in the verdict, that by the custom of merchants' bills of lading, expressing goods to have been shipped by any person, to be delivered to order or assigns, are, before the ships arrival, negotiable and transferrable by him to any other person, by his indorsing his name, and delivering or transmitting the same so indorsed, to such other person; and that by such indorsement, delivery, and transmission to such other person, the property is transferred to such other person. And evidence to the same effect was given, at a trial in a subsequent case." || p. 342, &c. ¶

We have great respect for the opinions of Mr. Abbott, and, where he does not involve himself in the obscurity of figurative expressions, that is, where we are certain that we understand him, we shall most probably concur with him.

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\* Lord Raymond, 271. 12 Mod. 156. 3 Salk. 290; but the report in Salkeld does not contain this dictum.

† 1 Hen. Blac. 357. ‡ 2 Term Rep. 674.

¶ *Haille v. Smith*, 1 Bos. and Pull. 563.

¶ In *Core v. Harden*, ante p. 23. Reports 44 Geo. III. Lord Ellenborough acceded to the opinion of the K. B. in *Lickbarrow v. Mason*; but he added, that though there is some analogy between bills of exchange and bills of lading, it is by no means strict and perfect in all respects.

But we fear lest those who have not well considered the force of *ancient custom* as necessarily *making law*, may be misled by the *ideas* of partial *adoption* into the *bosom* of the *law*, and of stretching forth arms with fondness, to *assert* and maintain those children of adoption, from motives of *consonancy to legal reason*, &c. We think, the common law knows no choice of any kind, and has no power of *adoption*. To us it seems that the courts of law which expound it, take things as they are, according to *common reason*, and decide upon the contracts of men, considering them as influenced by *ancient custom*, because, where the contrary is not expressed, the contracts of all men are made with a view to well known ancient customs, which are tacitly implied in those contracts, and which give *meaning* to the very words in which they are expressed. *Quem pænes arbitrium jus est et norma loquendi*. Considered upon this principle, which we believe to be the only true one, the negotiability of a bill of exchange by indorsement, stands upon the same foundation as the incapacity of being assigned, or being negotiable by transferring a right of action, as well as a right of interest, which is attributed to other *choses in action*. Each alike rests upon ancient usage, and there is no departure from principle in either case.\* He who gives a bond to pay money to another, or his certain attorney, his *heirs*, executors, administrators, and *assigns*, knows that by ancient custom, the assignment of it does not pass the right of bringing an action, in the name of the assignee, but that it must be brought in the name of the obligee, or his legal representative, and that whenever he is sued upon it,

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\* It is the opinion of *Blackstone*, that all the *common law* depends upon custom, and he thinks it a peculiar mark of British liberty. Judge *Wilmot* once said, that the common law was made up of the relics of ancient statutes now lost; and Lord *Hale* thought that part of it, at least, was so. The latter opinion seems the best as a medium, but we should settle rather nearer to *Blackstone* than to Judge *Wilmot*, for a little acquaintance with the early writers, will evince that much of it is laid down in the very words of the *Roman law*, and, therefore, evidently not introduced by legislative enactment, but gradually deduced by the decisions of the courts, from reason, convenience, and the general opinion of all mankind concerning right and wrong. Judge *Foster*, in *Edie v. The East India Company*, 2 Burr. 1226. says the *custom of merchants* is a part of the common law of the land; and adds that a sufficient distinction is not made between general customs, which are a part of the common law, and particular customs which are not so; but are in truth exceptions.



he can set off any thing which is due to him from the obligee. He therefore manages his affairs accordingly, and deals with the obligee, in future transactions, with a view to this right of set-off. The acceptor of a bill of exchange payable to *order*, knows that he is liable to be sued by the assignee, called the indorsee, and is not entitled to the like set-off. The ancient usage in each case constitutes the difference, and explains the meaning of the terms "payable, to order," and "payable to his certain attorney and assigns;" between which grammarians and lexicographers would be at a loss to make any essential distinction. Courts of justice know this, and would not do justice if they did not regard it. We conceive, therefore, that if a bill of lading be assignable to any certain extent, in a similar manner, it is so for the same reason, namely, because it has been so immemorially used by all those who have been concerned in the making and transferring of bills of lading, and the statute law contains no enactment to the contrary. If we are not mistaken, the custom of merchants is the law of merchants,\* and the law of the land in mercantile transactions, because that custom is presumed to be had in view by all parties in the course of their contracts, and the universality and antiquity of an usage may well warrant courts of justice in considering it as an implied term with both by the contracting parties. Mere frequency of practice, in late times, is not sufficient evidence for this purpose; and it is at best questionable whether even the universality of a practice is or ought to be so, if it is not at the same time of ancient origin. The consonancy to *legal reason*, which we cannot distinguish from common reason, is, we presume, not a necessary part of the law of merchants, because we may be assured, that in matters of contract, nothing will be universal and perpetual which is wholly absurd and inconvenient; and if its conve-

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\* We think the term "*custom of merchants*," which is used in pleading, is preferable to "*law of merchants*," because the latter implies, in some degree, the existence of two systems of law, one for the merchants, and another for other men; which is not the case. The law, as it seems to us, requires that all men should perform their contracts and engagements with each other; and in the case of mercantile transactions, the *custom of merchants* settles what are the terms of those contracts. In like manner the general custom of farmers, and the custom of carriers and wharfingers, is binding in law upon them in their respective transactions.

nience or propriety is not altogether obvious, yet the universality of error has of itself the force of law.\*

After the opinion we have already given of the work, we need scarcely say that these observations do not detract from our sense of its general merit. We have, indeed some apology to make for seeming to question the correctness of Mr. *Abbott's* opinions, where, it is probable, there is no difference between us, except in terms; but though our ideas of the force of custom in law may not be novel to him, they may be useful to young students, by affording one instance, among many, that common reason and common law have an intimate connexion; and we are desirous, at all times, to impress upon our younger readers most strongly our conviction that law is never so well studied, nor so much admired, as when its maxims, its principles, its distinctions, and even its anomalies, are traced to their source, and found to subsist essentially in the nature of things: it is then no longer an artificial system of arbitrary rules imposed by blind authority, but a philosophical science of practical ethics, founded in the immutability of truth and reason.

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**ARTICLE XI.—REPORTS of CASES of CONTROVERTED ELECTIONS, in the second Parliament of the United Kingdom, begun and holden the 31st of August, 1802. By ROBERT HENRY PECKWELL, of Lincoln's Inn, Esq. Barrister at Law.—BUTTERWORTH, Fleet-street, 1804.**

**MR. PECKWELL** gives the following account of his reasons for the publication of this part of his Reports, and of the plan which he has pursued in preparing it for the press.

“ It has been thought expedient to publish this first part as soon as it could conveniently be prepared, for two reasons: first, in order that in the trial of the later petitions, some advantage may be derived from the arguments and determinations now reported; and secondly, that the author, on a future occasion, may be able to avail himself of the judgment of the profession, and adopt such improvements as shall be suggested in consequence of the present publication.

“ It has been studiously endeavoured to select for the materials of this work such things only as relate to question of parliamentary law, and properly belong to a professional book. No more of the facts of each case have been given, than are necessary to make the arguments understood; and the arguments themselves have been collected and compressed into one speech only on each side: it is

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\* *Communis error facit jus.*

also proper to add, that although the substance of them has been strictly preserved, the language in which they are drawn up, is entirely that of the reporter; the manner in which causes are necessarily conducted before committees, rendering it impossible to adhere, in any degree, either to the language or to the arrangement of the speeches of the counsel.

"An introduction will be furnished hereafter, to be prefixed to the first volume, containing an account of the proceedings in the House of Commons in matters relating to elections, as well in the present parliament, as in former parliaments since the passing of Mr. Grenville's act; such as the presenting of petitions, the discharging or enlarging of recognizances, the formation of select committees, the distinction of parties, and other subjects of the like nature.

"It remains only for the author to express his warmest acknowledgments for the assistance which he has received from the members of the House, and of the committees, and from the professional gentlemen employed in these causes. A fitter place will be found, than in the advertisement to this small part of his work, to express his gratitude for more important advantages which have been afforded to him from other sources: but he cannot omit the earliest opportunity of acknowledging his obligations for the very able and active exertions of several of his friends, who have contributed much of their time and labour to complete the series of these reports. To demonstrate the value of this assistance, it is sufficient to mention, that in the month of February, 1803, no less than seven committees were sitting at one time. For the case of Tewksbury in 1797, he is indebted to Mr. John Dowdeswell, of Lincoln's Inn, who very kindly furnished him with a copy of the evidence in that case, and of the speeches of the counsel, taken in short-hand."

We have only to observe that since the public are deprived of the assistance of Lord *Glenberrie* as a reporter, the task of recording the proceedings of the committees of the House of Commons on contested elections, could scarcely have fallen into better hands; and, coming after one of such acknowledged excellence, it is no small praise to say that he is worthy to be his successor. We have not ourselves been present during the entire hearing of any one of these cases, but we have heard them well spoken of by others who have far better opportunities of determining with certainty; and judging from internal evidence and what we have ourselves seen of the author's ability as a reporter on other occasions, we can have no doubt but that they are faithful and well digested abstracts of arguments of the counsel on both sides, as well as of the history of the different boroughs and the statement of the cases, divested of those immaterial circumstances with which, by the over-cautious anxiety of the parties they are sometimes incumbered. The assistance,

which he acknowledges to have received from others, is both honourable to himself and his friends, and we may add that it is an aid which no one deserves better, because we believe no one is more ready to afford it to others. The *Account of the Proceedings of the House of Commons* in matters relating to elections, which, we presume, is a practical work, we have no doubt will be acceptable to the profession from the earnest that the author has given in this work of his ability for the execution of it.

The part already published contains eleven cases, viz.

1. *The Burghs of Dumfermling, &c.*—2. *The Borough of Shaftesbury.*—3. *The College and University of Dublin.*—4. *The Borough of Great Grimsby.*—5. *The Town, &c. of Nottingham.*—6. *The Borough of Barnstaple.*—7. *The City, &c. of Coventry.*—8. *The Borough of Bridgewater.*—9. *The Burghs of Inverness, &c.*—10. *The Borough of Liskeard—Not. (A.)* *The Borough of Tewkesbury, 1797.*—11. *The County of Hereford.*

We shall extract that of the town of Nottingham as a specimen of the author's manner.

“The petition of D. P. Coke, Esq. \* set forth, that in pursuance of a writ directed to the sheriffs of the town and county of the town of Nottingham. for an election of two members to serve in parliament for that place; the proclamation for such election was regularly made, and the day, hour, and place for such election were thereby fixed to commence at the Exchange Hall, on Tuesday the 6th day of July, 1802, at nine o'clock in the morning; that the election accordingly commenced at the day, and hour, and place which had been so fixed; when Sir John Borlase Warren, and the petitioner, were the only candidates nominated in the presence of the electors then and there assembled; and that no poll was demanded, nor was any other candidate proposed for near an hour after the different forms had been gone through preparatory to the said election; whereby, as the petitioner conceived, the petitioner, and the said Sir J. B. Warren, were duly elected the members to serve in parliament for the said town and county of the town of Nottingham; and that it was the duty of John Allen, who was one of the sheriffs of the said town and county of the town of Nottingham; and who presided at the election, to have returned the said Sir John Borlase Warren and the petitioner as duly elected; but, in violation of such duty, and for the express purpose of giving time to procure a third candidate, so that the free and unbiassed choice of a great majority of the electors of Nottingham might be disappointed by means of tumult, riot, intimidation, and violence, the said John Allen did, of his own au-

thority and by his own act; unnecessarily, vexatiously, and illegally open a poll, and frequently and repeatedly urged the electors to name other candidates, and that he repeatedly declared that if they did not propose some other candidate, he must close the poll; and that although no other candidate appeared, and although he was repeatedly called upon by the voters in the interest of Sir John Borlase Warren and the petitioner, to declare Sir John Borlase Warren and the petitioner to be duly elected, the said sheriff, contrary to the duties of his office, neglected so to do; and that after a considerable time had elapsed, during which the electors had polled for no other persons but the petitioner and the said Sir John Borlase Warren, some person or persons intimated that Joseph Birch, Esq. a merchant, residing at Hazel Hall, in the county of Lancaster, and at that time and for some days afterwards, attending as a candidate to represent Liverpool in parliament at the election then depending, would come forward as a candidate; and that three voters only having polled for the said Joseph Birch and 44 for the petitioner and the said Sir John Borlase Warren, the said sheriff adjourned the poll to the subsequent day, without any agent or other persons authorized by the said Joseph, or any elector having demanded a continuance of the poll.

"The petition proceeded to allege, that during the remainder of the poll a scene of riot took place, utterly incompatible with the freedom of election, by which at least 600 persons were prevented from voting for the petitioner; that these riots were caused and continued by persons in the interest of the said Joseph Birch; and that John Davison, Esq. the mayor, John Allen the sheriff, and Thomas Oldknow and Joseph Oldknow, aldermen, and, as such, magistrates of the said town, though repeatedly applied to, took no effectual steps to prevent the violent and illegal acts which were there committed; and that, when at last the riots increased to such a degree as to render the calling in of an extraordinary force necessary, they refused to have recourse to it, although they had the first legal advice to warrant them in pursuing such a measure.

"Three petitions\* were afterwards presented from different electors, not differing in substance from the preceding; but on the 8th of December, 1802, a fourth was presented, signed by certain persons who had signed one of the former, stating, that they had learnt with extreme regret that their names were affixed to a petition containing such allegations as have been mentioned, against the magistrates of the town; that they disclaimed all such allegations, having been informed at the time that they were solicited to subscribe their names; that they were only called upon to declare that their intention was to have voted for Mr. Coke, and praying such relief as to the house should seem meet. This petition was ordered to lie on the table.†

\* Votes, 46, 49, 50.

† Votes, p. 187. See Journ. 32. 401. 456.

There being no dispute concerning the right of election, the last determination was entered as read. *Vid. Journ. 10 June, 1701.*

"The petitioners proposed in the first place to shew, that the election, in point of law, being finished before Mr. Birch was nominated, Mr. Coke should have been returned by the mayor; and consequently ought now to obtain his seat from the judgment of the committee.

"Secondly, That at least the election should be declared void, on account of the riots.

"Thirdly, They desired of the committee a special report to the house, of the conduct of the mayor, and the other magistrates.

"The substance of as much of the evidence as it is material to relate, is given in the petition of Mr. Coke. One circumstance only need be added, namely, that after the nomination, a few votes being given for the two candidates, (as is the custom at Nottingham, though there be no opposition) some persons having suggested to the sheriff that it was time to close the poll and make the return, Mr. Coke desired that a few more might be allowed to give their voices. This request was much insisted upon by the counsel for the sitting member, as at least an acquiescence on the part of the petitioner to the continuance of the poll.

"Evidence was given of the most enormous and unexampled riots and it was also proved, that Mr. Coke's committee applied to the mayor to call in the military, who were stationed at the distance of two miles from the town, to quell them; that Mr. Birch protested against such a measure; that in fact the mayor ordered the military into the town, but on their arrival stopt the poll, which was not resumed, till it was thought that quiet was so far restored as to admit of their being sent away again.

"As there was scarcely any dispute that the tumults were such as to avoid the election; and as the conduct of the magistrates involved merely a question of fact upon which the committee exercised their judgment in such a manner as appears by their report to the house, it is unnecessary to detail either the evidence or the arguments relating to either of these points; the authorities cited upon the subject of calling in the military during the time of the election are collected in a note in the end of this case!

"The only question of law that arose, was, whether or not the election was already complete in favour of Sir J. Borlase Warren and Mr. Coke, before Mr. Birch was nominated?

The following are the arguments made use of by the counsel for the petitioner:

"Whatever question there may be as to the nature of the power of the returning officer, during a poll, to judge of the legality of votes, there can be no doubt, but that where there is no opposition, his duty is merely that of a minister, to return such as are presented to him by the unanimous voice of the electors, expressed or implied. Still less has he any authority to propose to them to name another person, or to protract the assembly till another candidate shall appear.

"He it to declare, in the first instance, upon his own view; to whom the majority belongs; but if that is disputed, recourse must be had to a poll, as a more accurate mode of ascertaining it. If there are no more candidates proposed than there are members to be returned, the majority is not in dispute; the electors must be taken to be unanimous; and it is absurd to inquire what is the choice of the greater part, where there is the consent of all.

"A poll therefore is a nullity, where the foundation of it, namely, a question as to the majority of voices, is wanting. So that the request of the petitioner to the mayor, in this case, that a few votes might be taken, should not have been attended to by him: and as there is no doubt that if he had immediately after the nomination closed the election, and made his return, it could not have been objected to; the house may do that which he should have done, and amend the return.

"It is necessary to a poll, that there should be a demand of it, either by the electors, or by a candidate; and there is no instance to be found, where it has been held competent to a returning officer, to take it, without any such demand, of his own accord. In the case of Cirencester, *Glanv.* 110, there being no regular demand made, the poll was held to be void; and he, in whose favour the number of voices was first declared, was there held duly elected.

"All the statutes which respect the conduct of returning officers in the granting or conducting of a poll, relate only to cases where there has been a previous demand of it. Stat. 7 and 8 Will. III. c. 25: s. 3. 'In case the said election be not determined upon the view, with the consent of the freeholders present, but that a poll shall be required for determination thereof.'—Stat. 25 Geo. III. c. 84: s. 1. 'Every poll which shall be demanded.'—

"In the same light it is considered by Lord Coke, 4 Inst. 48, 'If the party, or the freeholders demand a poll, the sheriff cannot deny the scrutiny.'

"The poll therefore in this instance, neither having been justified by the occasion, nor taken under the authority of the law, was utterly void; and the two candidates, who were at first proposed without opposition were legally elected, and should have been returned. The election in point of law was finished, and could not be affected by any subsequent act. The case of Arundel, *Glanv.* 71. shews that it is not in the power of the returning officer to protract the election unreasonably; and there, the votes of ten persons were held to be ineffectual and void, as coming after the election fully past and determined. 'Or else it might be in the power of an obstinate or wilful mayor or officer, to continue the election at his pleasure.' And the return was amended. And in the case of Westminster, 8 Journ. 280, the return was sustained. A poll had been demanded and granted; but the high bailiff returned those who had the majority on the view, having waited half an hour only; during which time none came to give their votes.

The counsel for the sitting member argued as follows:

"The election was not closed at the time when the first votes were given for the sitting member. The petitioner had been nominated

only, not elected. Their final choice was not yet declared: by the nomination, the candidate is only proposed; by the consent of the electors given to that proposal, he is chosen. But a poll may be required, even after the returning officer has declared; upon the view, to whom the majority belongs. And Mr. Glanville says, in the same case of Cirencester, p. 110, 'If any one had rested unsatisfied that Sir W. Master had the most voices of rightful electors, he might have demanded the poll of them *at any time* before the assembly was dissolved.' Here the assembly was not dissolved; and the friends of the sitting member might have reasons for not choosing to propose him, till they saw that the returning officer was preparing to make his return.

"Formerly, a much stricter rule was observed as to the time of election, than is at present. Those only voted who were present at the time of the proclamation; and it was a doubt whether persons coming in afterwards could be received to give their voices. It was however settled so early as the time of Glanville,\* that 'he that cometh any time of the day, while the election is in agitation and unconcluded, cometh time enough to give his voice; the whole election being but one continued act in law.'

"So, as to the granting of a poll, the stat 23 Hen. VI. c. 14. directs the election of knights of shires to be made between the hours of eight and eleven in the forenoon and in the case of Yorkshire, 1 Journ. 802, Mr. Glanville seems to have been of opinion, that a poll demanded before but not granted till after eleven, was void. But Mr. Serjt. Heywood says: 'In modern times, such strictness is not insisted upon; and as the sheriff may declare the majority upon the view after the statutable hours are elapsed, so any freeholder or candidate may demand a poll at any time, whether within the prescribed hours or not, before the sheriff has declared that majority, or within a reasonable time after.'

"Further, as to the time at which a candidate may be proposed: there are no authorities which say that he may not be proposed at any time before the return is made. The case of Montgomery, in the 15th vol. of the Journals, p. 94, is in point to this case. The petitioner, who seems to have been the only person at first nominated, alleging, among other causes of complaint, a surprise in the sitting member appearing as candidate; and it was proved, that it was not till after the election was begun, that one Powel demanded a poll for him. This fact was not disputed, but, on the contrary, confirmed by the evidence produced on the other side. Both the committee and the house resolved the sitting member to have been duly elected and returned. From this case three points may be collected, which effectually destroy the pretensions of the petitioner:—1. That the nomination and election are essentially distinct:—2. That during the continuance of the election, a third candidate may be proposed:—3. That the election is not concluded till the return is made. So in the case of the county of Essex, in 1689. It appears from the proceedings on Mr. Honeywood's petition, that

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\* Gloucestershire, p. 108.



a poll was not demanded by Mr. Wroth till an hour and a half after the reading of the Prince of Orange's letter, and the chairs were already brought to carry Col. Mildmay, and the petitioner. Mr. Wroth was declared duly elected. And formerly the election of the two members might take place on different days. Berealston, 28th of April, 1640. In the case of Bristol, 1 Ld. Gl. 259, the committee held Mr. Burke to be eligible, although he was not named as a candidate till the second day of the poll.

"The circumstance of the poll being granted to the friends of Mr. Coke, and at his request, excludes the question, whether or not there was a regular demand on the part of Mr. Birch? and being once opened, it was not in the power of the sheriff to close it, even at the request of those who first demanded it. *Whitel. on Parl. Writ.* In fact, it is a very general practice, where there is no contest, for several persons to set their names to the return besides the sheriff; a practice founded probably on the stat. 7 Hen. IV. c. 15, which requires the indenture to be under the seals of all that did choose, and ordains that the form of the writ shall contain the same direction. At all events, the election was unfinished; and while it continued so, it was competent to any person to give his voice for whom he pleased. And it cannot be pretended, that the interval,\* proved to have taken place from the time of meeting to the time of the first vote given for the sitting member, is an improper delay, or an unreasonable time to be allowed to the electors to make their choice.

"The committee, on the 15th of March, determined the election to be void; and consequently decided as to this point of law against the petitioner; but in their report to the house, they severely censured the returning officer, for permitting, in the circumstances, a poll to be opened.

"The minutes of the committee were printed by order of the house, and the issuing of a new writ was delayed till after the passing of a bill, by which an authority is given to the magistrates of the county of Nottingham, to preserve the peace in the town during the time of elections. It received the royal assent on the 17th of May. The proceedings of the house upon this matter, and the several petitions presented against the bill, will be found in the Journals, from the 20th of April to the 17th of May, 1803.

"The following are resolutions which the committee came to, after determining that neither the sitting member, nor the petitioner, was duly elected:

1. "That it appears to this committee, that John Allen, being the returning officer at the last election for the town and county of the town of Nottingham, acted contrary to his duty in opening a

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\* There was some dispute as to the duration of this interval; the petitions represented it to have been an hour and a half; but the committee, in their report, state it to have been about half an hour.

poll, and proceeding to take the votes of electors for the period of about half an hour, and until forty electors had polled, there being during the whole of that time no third candidate.

2. "That it appears to this committee, that after the first day of the said election, the freedom of the election was grossly violated by disturbances and riots, accompanied with personal intimidation and violence, practised and continued during the six subsequent days of polling.

3. "That it appears to this committee that D. P. Coke, Esq. after sustaining several insults and suffering personal violence, was obliged, from the just apprehension of hazard to his life, to leave the place, and could not venture to return; and that a large body of electors were deterred from exercising their franchise of voting.

4. "That it appears to this committee, that John Davison, the mayor, and Joseph Oldknow and Thomas Oldknow, two of the aldermen of the said town and county of the town of Nottingham, took no effectual means to preserve the freedom of election, or restore it when so violated, or to punish the offenders.

5 "That it appears to this committee, by an entry in the corporation book of the town and county of the town of Nottingham, that at a common hall, held on Thursday the 8th day of January, last past, (after reciting the petitions referred to this committee), it was resolved, that this corporation will defray all such legal expences as have already been or shall hereafter be incurred by them the said John Davison, Joseph Oldknow, Thomas Oldknow, and John Allen, or either of them, or George Coldham, under their direction, in preparing for or making their defences, and that the chamberlains for the time being be hereby authorized and directed from time to time to advance Mr. Coldham all and every such sum and sums of money as may be necessary for this purpose.

6. "It appearing that the mayor and aldermen have, by charter, an exclusive jurisdiction within the town and county of the town of Nottingham, and the committee thinking it highly expedient to provide some better security than is likely to be provided by the corporation of Nottingham, to preserve the peace within the town and county thereof, and to prevent the repetition of the same disgraceful scenes :

"That it is the opinion of this committee, that the house be moved for leave to bring in a bill to give the magistrates of the county of Nottingham, concurrent jurisdiction with the magistrates of the town and county of the town of Nottingham.

"That it is the opinion of this committee, that unless such or some other measure to the like effect be taken previously to the next election for the town and county of Nottingham, there is no reasonable hope that a free election can be had.

7. "That the evidence adduced before this committee be laid before the house for its consideration :

8. "That it appears to this committee, that alderman Foxcroft was employed to procure signatures to one of the petitions referred

to this committee; namely, that signed by 537 petitioners, and containing the following allegations: 'That at the said election they had determined to poll for the said D. P. Coke, but that such was the violence of the mob, systematically regulated and conducted for the purpose, that they were completely intimidated, and thereby prevented from polling for the said D. P. Coke: that the said John Davison the mayor, John Allen the sheriff, Thomas Oldknow and Joseph Oldknow, two of the aldermen of the said town, and who by virtue of their offices were magistrates, frequently attended on the hustings, and were repeatedly applied to to preserve the peace of the place and the freedom of election; but the said magistrates took no effectual steps to prevent any of the violent or illegal acts which took place at the said election:

9. "That it appears to this committee, that the said alderman Foxcroft stated to those who signed that petition, that it was a petition for those who would have voted for Mr. Coke; but he admitted that the major part of them were not acquainted with the allegations against the magistrates and sheriff; and that about sixteen of those who signed the petition were, to his knowledge, not at Nottingham at the time of the election.

"To report, &c.

"A criminal information was moved for in the court of King's Bench, in Easter term, 43 Geo. III. against the magistrates, and members of the corporation, upon this ground; that certain petitions having been presented to parliament, complaining of the misconduct of some of the defendants, the defendants had, in their official capacity, and out of the funds of the corporation, defrayed the expence of the defence. Upon cause being shewn, the court discharged the rule; being of opinion that no criminal purpose was shewn; and that, considering how deeply interested the corporation might eventually be in the decision of the committee, their conduct was justifiable.

"It was made a general rule in all the committees, that no witness should be examined who had been in the room during any part of the trial, the agents of the parties only accepted. An application was made in this case to make another exception in favour of the returning officers, whose presence was alleged to be necessary to protect themselves against the charges made against them in the several petitions. They had been served with warrants on the part of the sitting member. The committee, after deliberation, determined that there was no reason to make the exception.

"The following are the principal authorities cited, respecting riots at elections. It would have been difficult to introduce them in the body of the case, without adding also a detail of the evidence relating to this part of it.

"Stat. 3 Edw. 1. c. 5. "Because elections ought to be free, the king commandeth upon great forfeiture, that no man by force of arms, nor by malice, or menacing, shall disturb any to make free election.' 2 Inst. 168.

"Stat. 13 Hen. 4. c. 7. requires sheriffs and justices of the peace  
[c c 2]

to repress riots with the power of the county; to record them when committed in their presence; and inflict a penalty upon them of 10*l.* in case of neglect. See also Stat. 17 Ric. 2. c. 8.

"Stat. 2 Hen. 5. c. 8. for the better execution of the stat. Hen. 4. directs a commission to issue under the great seal, to inquire of the riots, and of the default of the magistrates who should repress them; extending the same regulations to boroughs and cities.

"Elections avoided for riots, Glanv. 143. Pontefract, 1624. 1 Journ. 797. Southwark, 1702. 14 Journ. 25. Coventry, 1706. 15 Journ. 278. 1722. 20 Journ. 60. Westminster, 1722, 20 Journ. 51. Coventry, 1736. 22 Journ. 819. Westminster, 1741. 24 Journ. 37. Pontefract, 1768. 32 Journ. 68; and the returning officer censured,

"Concerning the presence of the military during elections. Resolutions of the House of Commons. 17th of Nov. 1645, 'That all elections of any knight, citizen, or burgess, to serve in parliament, be made without interruption or molestation by any commander governor, officer, or soldier,' &c. 4 Journ. 346.

"22 of Dec. 1741" 'That the presence of a regular body of armed soldiers, at an election of members to serve in parliament, is an high infringement of the liberties of the subject, a manifest violation of the freedom of elections, and an open defiance of the laws and constitution of this kingdom,' 24 Journ. 37;

"Stat. 8 Geo. II. c. 30 $\frac{1}{2}$ , reciting the stat. 3 Edw. 1. enacts, that in case of an election, the secretary at war shall issue orders for the removal of soldiers to the distance of two miles at least from the place of election, and forbidding them to make a nearer approach till one day at least after the end of the poll. This act has in some instances received a temporary and local suspension. See stat. 20 Geo. III. c. 1. and 50. 21 Geo. III. c. 43. 22 Geo. III. c. 29.

\*The stat. 8 Geo. 2. c. 30, was prepared by the judges, in obedience to the direction of the House of Lords, April 22d, 1735. The Lords had addressed the king; and, in compliance with that address, the several allotments of quarters made for the land-forces had been laid before them. The bill was a measure of precaution, taken in consequence of the increase of the standing army about that period. There is a very good account of the debate which took place upon the subject, in the Gentleman's Magazine of that year, p. 751. It seems there to be agreed on all hands, that nothing but a necessity, so strong as to supersede all law, could justify a returning officer in demanding the assistance of the military, or a commander in affording it.

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## COMMUNICATION.

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### *Concerning the last Loan Act, the Property Tax, and Devises of Stock.*

THAT there are occasionally many, and perhaps altogether pardonable inaccuracies and omissions in our modern statutes, must have been often observed by you, in common with every person at all acquainted with their contents. A remarkable and important one occurs in the last loan act, 44

Geo. III. c. 47, pp. 423 and 427.\* In one of the clauses of this act, the funds created thereby are made liable to the payment of the income duty, after a certain period; and in the other they are expressly exempted from all taxes, charges, and impositions whatsoever. What will be the construction which a court of law will put upon two distinct clauses so contradictory I will not anticipate, but as it is probable that few are possessed of this act, and loan acts are not printed at length in the *quarto* or *octavo* editions of the statutes, I shall here insert both clauses, only observing that the clause of total exemption is the latter of the two, and that the error has obviously arisen from the framer of the act inserting, by mistake, the ordinary clause of exemption contained in former loan acts, without adverting to the previous clause imposing the duty.

"Provided always, and be it further enacted, that the duty granted by an act of the last session of parliament, intituled, 'An act for granting to his Majesty, until the sixth day of May next after the ratification of a definitive treaty of peace, a contribution on the profits arising from property, professions, trades, and offices,' shall not be charged upon the half-year's dividend arising on the 5th day of July, 1804, of so much of the 3l. per centum consolidated annuities, granted by this act, as shall not have been written into the books of the bank of England on or before the 18th day of May, 1804, being the day appointed by the governor and company of the bank of England for closing the accounts of the said 3l. per centum consolidated annuities, previous to the payment of the half-yearly dividend thereupon that will become due on the 5th day of July, 1804, nor upon the half-year's dividend payable on the 10th day of October, 1804, of so much of the 3l. per centum reduced annuities, created by this act, as shall not have been written into the books of the bank of England on or before such day as shall be appointed by the governor and company of the bank of England for closing the accounts of the said 3l. per centum reduced annuities, previous to the payment of the half-yearly dividend thereupon, that will become due on the 10th day of October, 1804." § 8.

"And be it further enacted, that such contributors, duly paying the whole sum so subscribed at or before the respective times, in this act limited in that behalf, and their respective executors, administrators, successors and assigns, shall have, receive and enjoy, and be entitled by virtue of this act to have, receive, and enjoy the said several annuities by this act granted in respect of the sum so subscribed, out of the monies granted and appropriated in this session of parliament for payment thereof, and shall have good and sure interests and estates therein, according to the several provisions in this act contained, and that the said several annuities shall be free from all taxes, charges, and impositions whatsoever.

The same act contains a clause relative to the transfer of stock by will, which, though common to all acts of parliament, creating new stock in the bank of *England*, is, I have great reason to think, but little known to the profession, owing to the circumstance before mentioned, that such acts are not printed in *Runnington's* or *Pickering's* editions. I allude to the 21st clause, which is as follows :

“ And be it further enacted, that books shall be constantly kept by the said accountant general for the time being, wherein all assignments or transfers of all sums advanced or contributed towards the said sum of fourteen millions five hundred thousand pounds, shall be entered and registered ; which entry shall be conceived in proper words for that purpose, and shall be signed by the parties making such assignments or transfers, or if such parties be absent, by their respective attorney or attornies thereunto lawfully authorized, in writing under his or their hand and seal, or hands and seals, to be attested by two or more credible witnesses ; and that the several persons to whom such transfers shall be made, shall respectively underwrite their acceptance thereof, and that no other method of assigning and transferring the said annuities, or any part thereof, or any interest therein, shall be good or available in law ; provided always, that all persons possessed of any share or interest in either of the said stocks of annuities, or any estate or interest therein, may devise the same by will, in writing, attested by two or more credible witnesses ; but that no payment shall be made upon any such devise, until so much of the said will as relates to such share, estate, or interest, in the said stocks of annuities, be entered in the said office ; and that in default of such transfer on devise, such share, estate, or interest in the said stocks of annuities, shall go to the executors, administrators, successors, and assigns ; and that no stamp duties whatsoever shall be charged on any of the said transfers ; any law or statute to the contrary notwithstanding.” § 21.

By this clause it appears that, in order to transfer stock to a devisee, two witnesses to the will are indispensably necessary, or the stock will go, not to the devisee, but to the executor. In cases of specific legacies of a certain and marked quantity of stock, this may give rise to a question of importance, though I leave it to others to say whether a court of law or equity would not, in all cases, consider the executor as a trustee for the devisee, when such a will is attested by one witness only. But, as it is better to avoid giving rise to questions of law, when it can be easily done, than to moot such questions before they do arise in practice, I trust, that through the circulation of your work, the practice of regularly attesting, by two witnesses, wills of personal property, in which there are devises of stock in the government funds, will become as general as the due execution of wills, concerning real property, by three witnesses.

AMICUS.

## BANKRUPTS,

*Declared in the London Gazette, from Sept. 1 to 25.*

The Solicitors' Names, and Dates of the Gazette, are preceded  
by a Crotchet.]

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Andrews George, of Sherborne, butches. [Foot, Sherborne. September 2.  
Allen Thomas, of Warrington, corn dealer. [Shuttleworth, Warrington. Sep-  
tember 15.

Billing Chalwell, of Agloshale, Cornwall, watchmaker. [Wallis and Bennett,  
Bodmin. September 1.

Brown John, junior, of Liverpool, merchant. [Greaves, Liverpool. Septem-  
ber 4.

Burnet Joseph, of Sherborne mercer and draper. [Pearson and Son, Pump court,  
Temple. September 3.

Clarke Richard, of Warminster, Wilts, horse dealer. [Holmes, Clement's Inn,  
London; and Lampard, Warminster. September 1.

Comer William, of Bristol, dealer in clay. [Lewis, King's Bench Walks, Inner  
Temple, London; and Gillett, Bristol. September 1.

Cowley Henry, of Plymouth Dock, innkeeper. [Kayll, Tower Royal, London.  
September 8.

Cole William, of Gosport, wine merchant. [Boswell, Gosport. September 22.  
Clegg James, of Griffin street, Shadwell, Middlesex mariner. [Leslie, Tokenhouse  
yard, Lothbury. September 25.

Castell Samuel and Walter Powell, of Lombard street, Bankers. [Hanson and  
Birch, Chancery lane. September 25.

Campbell James, of the Shakespeare tavern Covent garden, vintner. [Clarkson,  
Essex street, Strand. September 25.

Devenish Francis Courteny, late of St. Martins lane, upholster. [Janes and Tooke,  
Tanfield court, Temple. September 12.

Dean William, of Bristol, linen draper. [Baynton and Clarke and Son, Bristol.  
September 15.

Dethick John, of Derby, grocer. [Evans, Derby. September 22.

Eaton Joshua, of Liverpool, merchant. [Statham and Sons, Liverpool. Sep-  
tember 4.

Faulkner Thomas, of Oxford street, Oil and Colourman. [Hutchinson and Hem-  
met, Brewers hall, Aldermanbury. September 25.

Gifford Richard Ireland, of Bristol, skinner. [Martin, Bristol. September 15.

Hilton Robert, of Holiwell street; strand, victualler. [Jones and Green, Salisbury.  
square, Fleet street. September 18.

Harris William, of Drury lane, woollen draper. [French and Williams, Castle  
street, Holborn. September 18.

Harding Thomas, of Ludlow, Salop, victualler. [Richard Russell, Ludlow. Sep-  
tember 25.

## *Bankrupts.*

- Langworth Anthony, of East Smithfield, St. Catherine. [Templer, Burr street; East Smithfield. September 1.
- Lodge John, of London Wall, carpenter. [Orchard, Hatton Garden. September 2.
- Lester John, of Barbican, coal merchant. [Wright and Bovill; Chancery lane, London. September 2.
- Lee John, of Liverpool, merchant. [Naylor, Liverpool. September 12.
- Long Nathaniel, of Oxford, tailor. [Taunton, Oxford. September 15.
- Musciwhite John Brown, late of Wareham, Dorset, butcher. [Part, Peale. September 4.
- Mead Jonathan, of Southminster, Essex, saddler and collar maker. [Cutting; Bartlett's Buildings, Holborn. September 2.
- Moore Mary, of Albemarle street, fancy dress maker. [Downey, Essex court Temple. September 22.
- Norman James, and George Worthington, of Chottin row, Manchester, common brewers. [Ray and Renshaw, Manchester. September 1.
- Parkinson Thomas and John Parkinson, of Coleman street, London, chymist and druggists. Nettlefold, Hind court, Fleet street. September 22.
- Pennial Robert, of Laurence Pountney lane, London wine merchant. [Noy] Mincing lane. September 14.
- Raynes John Thomas, of Quebec street, St. Mary-le-bone, Middlesex, mariner. [Leigh and Mason, New Bridge street, London. September 1.
- Ryan Alexander and William Baynes, late of Harrington, Liverpool, joiners. [Kirpatrick, Hanover street, Liverpool. September 11.
- Roberts David, of Chester, ironmonger. [Bedford and Meeham, Birmingham. September 22.
- Riding John, of Liverpool, and William Lever, Manchester, merchants and partners. [Stanistreet and Eden, Liverpool. September 21.
- Speed Thomas, of Cannon street, druggist. [Nicholls and Nuttall; Queen street Cheapside. September 2.
- Shargie William, of Ledbury, Herefordshire, cartier. [Richards of Ledbury, and Tarrant and Moule, Chancery lane. September 15.
- Took John, of Methwold, Norfolk, grocer. [Micklefield, Stokes Ferry, Norfolk. September 22.
- Wentlake Robert, of Exeter, Devon, grocer. [Martin, Vintner's Hall, Upper Thames street, London. September 1.
- Wilsons William and John Wilson of Basinghall street, woollen drapers. [Brown, Pudding lane. September 11.
- Wilkinson John, of Leeds, woolstapler. [Coupland, Leeds. September 15.
- Williams Henry, of Shepherd's market, May-fair, grocer. [Richings, Thavers Inn, Holborn. September 12.
- Wingfield William, late of Liverpool, merchant. [Keightley, Liverpool. September 22.
- Wakeford William, of Hornham, Sussex, shopkeeper. [Stedman, Hornham. September 22.
- Weston Charles and Robert Weston, of Foster lane, Cheapside, London, warehousemen. [Berry, Walkbrook. September 22.

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TO CORRESPONDENTS.—We have not room for the Observations of Students in the present Number.

We expect soon to hear from our friend who proposed BLACKSTONIANA.

We have received some Observations on *Co. Lit.* 162, 2, which shall be noticed in our next Number.



## COMMUNICATIONS.

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WE have received the following letter from STUDENS :—

“ When Lord Bacon said ‘ Master Attorney who *read* upon this statute *said well*,’ there can be no doubt that Coke was the person meant ; but I confess myself unable to perceive how the inference which I submitted from the expression ‘ Coke in his reading doth say well,’ is in any degree invalidated by it, for in the one place *the fact* of Coke’s *having read* upon the statute is spoken of, whilst in the other the reading *as a work* is referred to. Supposing I should say, ‘ Mackintosh who *lectured* upon this subject *said well*,’ the person to whom I might address myself would understand me as alluding to the *fact of his having read*, as speaking of an oral or *vivæ voce* observation ; but if I should afterwards say, upon another point, ‘ Mackintosh in his *lecture* doth say well,’ I should necessarily be understood as alluding to a published lecture ; and certainly no one would be less disposed to think that I was alluding to a published work merely because I had in a former part of the same observation referred to the *fact of his having read* in the *past tense*.

“ In the last Number of the Journal, it is said that Lord Bacon notices the *reading* in the *past tense*, but that is a mistake, and the root of the erroneous conclusion, for Lord Bacon there alludes to the *fact of his having read* to the actual delivery of the discourse.”

We have only to observe that though we did not mean to say the words referred to (p. 20 *Bacon’s Reading*) warranted no such inference at all, yet, in the absence of further evidence, we are still inclined to think the expression accidental. We agree with *Studens*, that the allusion in p. 5 of *Bacon’s Reading*, does not relate to the *reading* as a work published, but to the *fact of reading*. Had it been otherwise, there would have been a further evidence of the publication. The authority we alluded to, and there can be none better, is that of Mr. *Hargrave*. We are still thankful to our friend *Studens* for drawing our attention to the passage above mentioned, and we shall be glad to see him employed on a subject more fruitful of information than the present is likely to be, since, whether the reading has been ever published or not, we fear it is lost. If we could restore it, we feel that we should confer a benefit on the profession, and we trust, there are none who will not be ready to assist us.

in the attempt. A gentleman who has already given a considerable proof of ability by some ingenious observations on the Rules of Descent, has promised a republication of *Bacon's Reading with notes*. We hope to see it executed *con amore*, for, we are well assured that no treatise deserves more the attention of the profession. It is not to be measured by its size. The hand of a master of no common mould, of one born, like *Newton*, to extend the sphere of science, is apparent in every line.\*

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*On the Statute 32 Hen. VIII. c. 37 ; and 162, a. b. Notes 4 and 1 of Co. Litt. 13th Edition.*

AS I understand it is within the design of your work to insert such communications as may tend to correct the errors of publications on legal subjects of importance to the profession, I have been induced to send you some observations which occurred to me on reading two notes of a gentleman of the highest celebrity for legal knowledge and great abilities, on that part of Lord Coke's Commentary on 32 Hen. VIII. c. 37, which relates to tenants for life.†

The learned editor supposes that the act, 32 H. VIII. c. 37, empowers the executors of tenants, for their own lives, to distrain for rent which accrued due to their testator in his life-time ; but he evidently is mistaken, for the words of the act are, " that it shall be lawful for the executor, &c. to distrain so long as the said lands, &c. continue, remain, and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent, or fee-farm, so being behind, to the said testator in his life, or in the seisin or possession of any other person or persons claiming the said lands, tenements, and hereditaments, only by and from the same tenants by purchase, gift, or descent." Now, at the common law, on the death of tenant for life, the estate of his lessee for years, or any other estate derived from his tenancy for life, would determine. *Cessante statu primitivo cessatque derivativus* is the maxim of law, and therefore, of

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\* As this sheet is going to press, we are informed that the new edition of *Bacon's Reading on Uses* is actually published ; we shall, therefore, take an early opportunity of giving an account of the manner in which it is executed.

† *Co. Lit.* 13th edit. 162, a. b. Notes 4 and 1.

necessity, no distress could be taken by the executors of the tenant for his own life after his decease, the lands not continuing in the seisin or possession of the person who ought to pay the rent, nor of any person claiming by or from him by purchase, gift, or descent.

The same editor, on the passage of *Coke*\* "that the executors of tenants *pur autre vie*, could not have distrained at the common law after the death of *cestui que vie*, which now they may do by the force of this statute; for, in that point, it addeth another remedy than the common law gave;" also observes "that this doctrine is impugned by the court's resolution in *Turner v. Lee*;† for, according to that case, the statute of *Henry VIII.* only applies where the common law gives no remedy." Now, the case of *Turner v. Lee*, it must be admitted, is accurately stated; but if the learned editor had investigated this subject in his usual manner, he would have perceived that, *by the last section of the act, a power is expressly given to the executors or administrators of tenant, pur autre vie, to distrain after the death of cestui que vie, and consequently that the remedy by distress is not so restricted as contended for in that case.*

September, 1804.

M.

### OBSERVATIONS.

We have inserted our correspondent's letter, in order to promote useful and liberal inquiry. At the same time, our respect for the very learned and able annotator on the first part of the institutes, together with the conviction that he has at present little leisure to apply to such an investigation, has induced us to undertake it, and to refer to the authorities cited by him: a task which we can by no means impose upon ourselves on every paper sent to us.

If we understand our correspondent rightly, he seems to think, that the several executors of tenants in fee-simple, fee-tail, and for life, of rent services, &c. who are mentioned in the preamble of the statute, are not all of them intended by that statute to have a double remedy, both by action of debt and by distress; but some of them are to have an action of debt only (confirmed where they had it by common law, and given anew where they had none before), and others a distress also, together with the action of debt, where they had not a remedy by distress at common law; and that this diversity is introduced on account of the difference in the nature of their estates, some having the reversion with the same estate continuing in their heirs, to which the distress

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\* *Co. Lit.* 162. b. † *Cro. Car.* 471.

should be incident, and others, who are tenants for life only, not having such reversion, but the estate of their tenants or grantees determining at their deaths. From this circumstance, we understand him to argue, that the words *so long as the said lands remain in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent or fee farm, so being behind, to the said testator in his lifetime, or of any other person claiming the said lands, only by or from the said tenants by purchase, gift, or descent*, point out a distinction between the above cases, where the estate of the said tenant in demesne and his tenancy, with respect to the testator and his heirs, do not determine by the death of the testator. To us this construction of the statute, 32 H. VIII. c. 37, does not seem correct; at least, it is not very obvious that this is the meaning of the legislature, and whether it be so or not, the note as it stands may still be correct as far as it goes; since it does not notice, and therefore does not expressly controvert, this distinction. And as the statute includes tenants for life of a rent-charge, granted out of the reversion, with the power of distress annexed, which is a charge created by the reversioner, he can have no reason in such case to complain of any injury to his reversion, by such remedy continuing after the estate for life in the rent-charge is determined. With respect to rent-charges for life, granted by the tenant in fee, we presume, therefore, the distinction does not apply at all; because, the same estate out of which they are granted still continues. The note in this respect at least is, therefore, correct, and should our correspondent be right in his subtle distinction, it may be considered as applicable only to such cases.

We, however, think, on the contrary, that the statute either gives or confirms to all the objects of the preamble, the *double* remedy by action of debt and by distress, and, that the restrictive clause, *so as, &c.* is intended only to provide for those cases where the person chargeable with the rent or those deriving title or holding under him are actually out of *possession*. In those cases, indeed, the distress would not fall upon the person whose goods ought, in common justice, to be liable to the distress. So that it is a provision, which amounts to no more than saying, that the goods only of the person liable to pay the rent, or of those who take under him and stand in his place, shall be liable to the distress. Now, although the estate of the lessee of tenant for life may be determined, yet such a lessee may continue in possession either as tenant at sufferance or otherwise, and during such time he would be liable to the

distress according to our view of the statute. But, if he were actually out of possession, he would not be liable.\* This, we submit to our readers, gives a clear, necessary, and general application and meaning to this clause, which, it is to be observed, is general in its terms, and applies to tenants and executors of testators, tenants in fee, as well as for life. Whereas, the other construction either narrows its operation to the case of tenants for life or particular estates only, or gives it a double effect, the one express and clear according to the terms of it, and the other very doubtful by mere implication, where it would have been expected that the exception should have been stated most explicitly. If this be not the true construction, the statute will be inoperative as to the tenant for his own life, whose executors had an action of debt for the rent due to him in his life-time at common law, for the statute gives them nothing in that respect. But, as it is a remedial statute, we presume, that the most liberal construction for the benefit of all the objects in the preamble, is that which the courts of law would adopt.

We must observe, that the case of *Turner v. Lee* was of a rent-charge for years determinable upon lives, and the principal question for the court was, Whether this, which was not within the words, was within the equity of the statute? The point, that the statute applies only to cases where executors had no action of debt at common law, is only introduced as the reason of the court, and possibly might not have been the actual *gist* of the judgment, and is overruled by *Hoole v. Bell*.† That case also was upon a rent-charge granted by the tenant in fee-simple to the testator for life, so that the distinction upon which our correspondent relies for his construction of the statute could not have occurred, because the land would still continue in the possession of a tenant to the reversioner out of whose estate the charge was granted; and, so, according to the distinction which we have before suggested, the principle of our correspondent's construction would fail. But, if that distinction is not sound, and we are not inclined to rely upon it very strongly, then the case of

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\* It may be objected that it is an injury to the reversioner to make the land liable to a distress after the particular estate is determined; and this seems the only reason for not extending the remedy of distress beyond such particular estate. But as it is only made liable for rent due during the continuance of the particular estate, there is in fact no injustice in it.

† Lord Raym. 172.

*Hoole v. Bell* is an authority directly in point, that the statute applies to all cases of tenants of rents for life.

We are aware that the subject is of some difficulty, and we believe, the learned annotator on the first institutes, has so considered it. If we have put our correspondent's view of the statute, and the grounds of it, in a sufficiently clear point of view, and have also opposed to it, as intelligibly as need be, the reasons which occur to us against it, we have done all that we intended. We do not presume to deliver an opinion dogmatically, but we leave our readers to form their own judgments. Our sole object is to defend the fair fame of one, to whom the profession is indebted for having devoted much to his labour for their general advantage, and who, though he may err, and would not be offended at his errors being pointed out, yet deserves at least, from us and the profession, that we should hesitate before we pronounce that a *mistake* has been committed by him.

The latter part of our correspondent's letter is, we think, not so ingenious as the former, Mr. *Hargrave* does not mean to adopt the doctrine of *Turner v. Lee*, at least not as to the point in question, for he cites *Hoole v. Bell* immediately after, and says that the law has ever since been taken accordingly.

#### TO CORRESPONDENTS.

A letter from AN OLD CORRESPONDENT, with whose hand-writing, however, we have not any previous acquaintance, has been received, and is under consideration,

We are happy to find from the letter of our Correspondent in *Norfolk*, that our account of New Law Books is so likely to be the means of extending the sale of works that are really useful to the profession.

We are at the same time rather surprised that the manner in which we had announced the title page of Mr. *Burn's digested index* has been misunderstood. 1 Vol. octavo and one volume octavo are the same thing with us. Had we meant to announce it as a part only of a work, in several volumes, and not yet complete we should have described it as volume the first, vol. 1st, or vol. 1, Octavo.

NIMROD has sent us some questions from *Carmarthen*, which we fear are inadmissible.

To the inquiries concerning the MS. of *Coke's First Institutes*, we can only answer that the absence of a friend who has undertaken to examine and collate such part of it as may be necessary for our purpose has hitherto prevented our proceeding further in our account of it.

# BANKRUPTS,

*Declared in the London Gazette, from Sept. 1 to 23.*

[The Solicitors' Names, and Dates of the Gazette, are preceoded by a Crotchet.]

Bennet James and Samuel Lovesey, late of High Holborn, pawnbrokers. [Funtun, Hand court, Fleet street. October 6.

Baker John, of Peckham, Surrey, carpenter. [Evans, Birchln lane. October 6.

Baruh Daniel, of Whitechapel road, apothecary. [Keys, James court, Bury street. October 13.

Binns Thomas, of Bromsgrove, nail factor. [Robertson, Droitwich. October 20.

Battersby Charles, Wapping, High street, ship chandler. [Elston, Catheriae cewt, Trinity square. October 23.

Birkitt John, of Beccles, taylor. [Mitchel, Saxmundham. October 23.

Brown Robert, of East Smithfield, grocer. [Gatty, Angel court, Throgmorton street. October 27.

Coates John, of Hamilton street, Piccadilly, taylor. [Cannon, Leicester place. October 2.

Cunningham John, of Epsom, Surrey, shopkeeper. [Broad, Union street, Southwark. October 6.

Campell John, of Epworth, Lincoln, mercer. [Capes, Epworth. October 20.

Cooper Edward, of Newark, Leicester, hosier. [Bond, Leicester. October 23.

Clark Thomas, of Wimslow, Cheshire, cotton spinner. [Barret, Manchester. October 27.

Candlish Matthew of Whitehaven, mercer. [Adamson, Whitehaven. October 27.

Dandy Thomas, of Bermondsey wall, Surrey, slopseller. [Robinson, Prospect row, Bermondsey, Southwark. October 6.

Dickenson Edward, of Berner's street, Oxford road, druggist. [Nethersole and Portal, Essex street, Strand. October 27.

Frailing Elias, late of Brightelmstone, Sussex, cheesemonger. [M'Michael, Finch lane, Cornhill. October 6.

Fuller Richard Plumer, of Guildford, Surrey, ironmonger. [Jenkins and James, New Inn. October 13.

Fisher Frederick Michael, of Barbican, jeweller. [Rutherford, Bortholomew close, West Smithfield. October 20.

Gott John, late of Armley, Leeds, Yorkshire, clothier. [Lee, Leeds. October 6.

Hyman Henry, late of Church street, Minories, Middlesex, jeweller. [Kibblewhite, Gray's Inn place. October 6.

Hemming John of Walsal, Stafford, druggist. [Spurrier, Walsal. October 9.

Huggins Richard, of Bristol, cabinet maker. [Stevens, Bristol. October 9.

Hill Stephen, of Bishopgate street, oil and colourman. [Townsend, Staples Inn? October 16.

Hill John, of Exeter, flour factor. [Sumey, Exeter. October 20.

Hyman Solomon, of Duke street, Aldgate, taylor. [Keys, James court, Bury street, St Mary Axe. October 29.

## *Bankrupts.*

James William of Red Lion square, apothecary. [Morgan, Bedford row. October 9.

Jepson George, of Prescott, Lancaster, grocer. [Wright Prescott. October 23.

Keens Joseph, of Basingstoke, Hants, dealer. [Phipps, Philpot lane, Fenchurch street. October 13.

Ladlow George, of Angel court, Throgmorton street, merchant. [Swain and Stevens, Old Jewry. October 9.

Lacey John, Cursitor street, brass founder. [Thompson, Portugal street. October 27.

Mayor William, of Preston, Lancashire, woollen draper. [Winder, Preston. October 6.

Main Thomas, of Brook street, Middlesex, stone-mason. [Latkow, Wardrobe place, Doctor's commons. October 13.

McCormack Daniel, of Marshal street, Red Lion square, coach maker. [Beckett, Broad street, Golden square. October 16.

Pearce William, and John Pearce, of Basinghall street, clothiers. [Alderson, North street, city road. October 13.

Pickman William, of Great Newport street, watch maker. [Robinson, Charterhouse square. October 16.

Pailthorpe George, of St. John's street, oilman. [Rutherford, Bartholomew close, West Smithfield. October 16.

Roberts, George Layland, Sulcoates of York, spirit merchants. [Pikard Kensington-upon Hull. October 2.

Rowden John, of Grand Junction Wharf, Whitefriars, timber merchant. [Humphreys', Tokenhouse yard. October 20.

Sayles Matthew, Joseph Hancock, and William Sayles of Sheffield, York, cutlers. [Brookfield, Sheffield. October 2.

Searle Sir Francis, of Kingston-upon Thames, Surrey, coal and corn merchant, [Ellison and Dawson, White-hart court, Lombard street. October 13.

Simpson Fanny, of Preston, Lancashire, milliner. [Lys, Toek's court, Cursitor street. October 13.

Sharman Thomas, of Castle street, Finsbury square, plumber. [Gilman, Bunhill row, Moorfields. October 13.

Showell John, of Mary-le-bone street, Golden square, hat manufacturer. [Jackson Walbrook. October 16.

Smyth John Gratix, of Batches row, Hoxton, merchant. [Gatty, Angel court, Throgmorton street. October 20.

Stevens James, of James street Oxendon street, corn dealer. [Moore, Red Lion court, Fleet street. October 27.

White Martin, of Portsmouth, wine merchant. [Calloway, Portsmouth. October 9.

Westall Richard Matthew, of Aldgate, High street, glasscutter. [Locket, Basinghall street. October 13.

Walker William, Chancery lane, tailor. [Parker, Cuppage, Young, and Hughes, Essex street. October 23.

Yarrol Thomas, of Finsbury place, tailor. [Woolfe, Philpot lane, October 2.







THE  
**LAW JOURNAL**

FOR 1805 ;

CONSISTING OF

*ORIGINAL COMMUNICATIONS ON*

*LEGAL SUBJECTS ;*

ACCOUNT AND ANALYSIS OF NEW LAW BOOKS ;

ANCIENT READINGS, &c. &c.

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*LONDON :*

PRINTED FOR W. CLARKE AND SONS, PORTUGAL-STREET  
LINCOLN'S INN.

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1806.

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Printed by W. Filat, Old Baisy.

## ADVERTISEMENT.

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WE have now completed a second volume of legal Miscellanies, and our readers will be enabled to judge more clearly of the nature of our plan.

It is our design to be useful rather than amusing ; and with this view, we have introduced an account of some Ancient Readings. It is rather our intention to give such an abstracted account of these learned remains as may guide the steps of any bold antiquary, who is desirous of making further investigations upon any particular subject of research, than to translate them at full ; for while we have found in them much that is interesting, we confess also, that there is much which our readers will thank us for not obtruding upon their notice.

Our correspondents will be seen rather to have increased, and on this head we could wish to offer some observations that may tend to the future advantage of the profession. Anonymous essays, we know, can have but little, if any, weight as authorities. We seldom have leisure to examine them carefully, and we can neither be answerable for their defects, nor justly claim any praise for their

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merits. We therefore request that they may be considered wholly independently of ourselves, and particularly of the gentleman by whom the *Reports* are published. The design of this part of our publication, in few words, is this. There are many gentlemen who are desirous of laying before the public their opinions upon miscellaneous subjects in the law, whether historical or theoretical, by which the profession at large would be benefited or amused; yet such is the nature of the sale of law books, that it seldom if ever happens that any writer, upon subjects which are not merely practical, is paid the first expence of his work: whereas, were the same things published in a periodical work, the writer would at least have the satisfaction of an immediate dispersion of his opinions throughout the kingdom, free of any expence.\* It is this facility which we offer to the profession, with a hope that it may promote useful inquiry, and aid in the general dispersion of knowledge; and if the advantages of it are duly weighed, we are confident that the utility of our publication in this point of view will be seen, and we trust it will be sufficiently encouraged.

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\* In some cases we could venture to promise the writer of any considerable essay, at a very trifling expence, a number of copies for his friends, or for the purpose of a separate sale.

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ON THE  
*PRINCIPLES OF CONVEYANCING,*

BY MR. WATKINS.

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CRITIQUE, *by an Old Correspondent, on the Principles of Conveyancing, by Mr. Watkins; together, with a succinct View of the Law applicable to Infancy, by a Friend of the Editor.*

HAVING lately perused a valuable modern publication, on the Principles of Conveyancing, by Mr. *Watkins*, I was surprized to find, that the first chapter of the third book contains, in my opinion, several errors, as the work in general is executed in a *correct* and *masterly* manner.

This elementary treatise being recommended to most young Conveyancers, it is of very great importance that the mischievous consequences which would result from the perusal of the chapter alluded to, in its present incorrect state, should be guarded against, I have, therefore, been induced to offer you, for insertion in the *LAW JOURNAL* the following observations and critique.

The author states, that "An infant may take by purchase as he may do any thing which is manifestly for his advantage." If this does not imply that all purchases which infants make are advantageous, which, undoubtedly, it does not, for purchases may be made by them as well as by persons of full age which are not so, the meaning of the passage must be, that all purchases, beneficial or disadvantageous, are good till avoided. This position cannot be maintained, for such as are disadvantageous, are absolutely void. See *Ketsey's case*, *Cro. Jac.* 320. And the author is not borne out in it by the authority he refers to; for the doctrine, as laid down by Lord *Coke*, is founded on the presumption that it was for the infant's benefit. Lord *Coke's* meaning, it must be confessed, is not very clear, as expressed in his Commentary, but he refers to the very case noticed above in *Croke*, as his authority, which puts the matter out of all doubt.

Again—"If a feoffment be made, livery may be given to him (the infant) in person, or even to another whom he shall appoint as his attorney, though the appointment of an attorney by an infant is not valid in itself at law." What a

Nº. 24. [ ▲ ]

monstrous inconsistency is here! How is it possible, when the appointment of a person as an attorney is void, that such person can act as an attorney! It is saying, that a person may act under the authority of another when he is not authorized. The appointment of an attorney by an infant, generally speaking, is not valid, but such an appointment to receive seisin is an exception to the rule.\*

With respect to conveyances by an infant, the author has committed a very serious mistake, he states, "All conveyances, however, by an infant, are voidable by him or his heirs." This is directly in opposition to Lord *Mansfield's* decision, in the case of *Zouch v. Parsons*. In that case, an infant heir of a mortgagee, reconveyed by lease and release; and the first question considered was, whether this conveyance was *binding* on the infant. Lord *Mansfield*, after an excellent display of principle, resolved, that the infant was *bound*. But it is not only in the case of a mortgagee, that the conveyance of an infant is binding. The principles and rules, which were laid down in *Zouch and Parsons*, will apply to and govern numerous other cases.

Again—"A fine or recovery are only voidable during his minority." This is not strictly correct, for if the proof which the law requires, namely, inspection, is had during his infancy, the fine may be avoided after he attains his full age. See *Cruise on Fines*.

"An infant trustee or mortgagee may be ordered to convey, &c. by a court of equity, under the statute 7 *Ann.*" By the decision in *Zouch and Parsons*, the trouble, inconvenience, delay, and expense of an application to a court of equity, are rendered unnecessary.

"An act of an infant, which cannot be to his advantage, is void *ipso facto*." This position is not very accurate, for an infant who hath a naked authority, may exercise it, and it will be binding on him, yet this act cannot be to his advantage.

"And an infant may be bound by a fair and reasonable marriage settlement." This position cannot be reconciled with the case of *Clough and Clough*, 3 *Woodeson*, 453, in which case a bill, praying that a settlement might be made pursuant to articles, was dismissed, on the ground of the

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\* From this it should seem that our Correspondent's objection is rather to the *manner* of Mr. *Watkins's* stating this point, than to the accuracy of it in *effect*,

wife's infancy at the time of entering into the articles; it must, however, be admitted, that this case of *Clough* and *Clough*, is only briefly mentioned in a note; and it is not reported in *Brown's* Ch. Ca. nor is it noticed, that I can find, by any other reporter. This case, therefore, may not be sufficiently strong to shake the former decisions on the subject. An infant wife may be barred of her dower by the acceptance of a jointure. See *Carruthers* and *Carruthers*, 4 Bro. Ch. Cases, and *Drury* and *Drury*, determined by the House of Lords.

AN OLD CORRESPONDENT.

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To the above statement or critique of our OLD CORRESPONDENT, we shall add,

*A Succinct View of the Law applicable to Infancy,*

With this we have been favoured by a Friend. We insert it here because it seems that it will not only be useful to enable our readers to judge with greater facility of the objections taken by our old Correspondent to certain passages in Mr. *Watkins's* book, but from our knowledge of the talents of the author, who has already favoured the public with some works which have been well received, we flatter ourselves it may be useful also to Mr. *Watkins*, in a future edition of his work, which we are informed is at present out of print, and much in request amongst the profession.

“ The great anxiety which pervades the law, to protect infancy from the designs of persons of more advanced years and experience, has given birth to several determinations in relation to the validity of the deeds of infants. The result of all of them seems to establish this proposition, *that the deeds of minors, where there is no appearance or semblance of benefit to them, are void*; but that those from which they may probably receive advantage, and are entered into with great solemnity, are *voidable* only, subject to ratification or avoidance when the infants arrive at legal maturity. This distinction was admitted and confirmed by the court of *King's Bench*, in *Zouch v. Parsons*.\* There the infant-

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\* 3 Bur. 1794.

heir of a mortgagee in fee, reconveyed the estate by lease and release; the heir still being a minor, the court held the deeds to be voidable only, as the transaction appeared to have been for his benefit. In the same case, the distinction in *Perkins*,\* was also acknowledged to be law, viz. that all grants, &c. which take effect by *delivery* of the infant's hands, are voidable, implying that deeds, &c. which delegate a *mere power* and convey *no interest*, as letters and warrants of attorney, are void,† but a letter of attorney to accept seisin, must be excepted, as that will be intended for the infant's benefit.‡ In relation to this subject, there is no difference between feoffments and other deeds which convey an interest; therefore, grants, releases, confirmation, &c. by infants are voidable only.§ Upon this established difference between void and voidable deeds—if an infant make a feoffment and livery in person; he cannot maintain the writ, *dum fuit infra ætatem*, until he attain 21, for the instrument is but voidable, and the court will not suffer his election to be bound by judgment prior to his arrival at maturity.¶ It is true, that he may enter *during minority* to reassert his possessory right, for the sake of the profits; but, even in that case, the feoffment would be *voidable* only, and dependent upon his election when he attained his full age. Another consequence from the above observation is, that an infant cannot plead *non est factum*, and give infancy in evidence, as appears from the latter part of s. 13 in *Perkins*, so that he must plead it specially to avoid the deed, and the reason is, because the deed has an operation from the delivery.¶¶

It was said by Lord *Macclesfield*, in *Cannel v. Buckle*,\*\* and by Lord *Hardwicke*, in *Harvey v. Ashley*,†† that an infant-feme might, with the concurrence of her relations or guardians, in consideration of a competent settlement, bind herself by contract in respect of her estate; but these opinions have been since overruled by Lord *Thurlow*'s express decision, in *Clough v. Clough*,‡‡ in which he decided that the marriage contracts of infants, male or female, were within the common rule of voidable acts; see also the

\* s. 12.

† *Hardw.* 376. 2 *Roll. Abr.* 2. *Palm.* 237.

‡ *Roll. Abr.* 730. § *Lit.* s. 259.

§ *F. N. B.* 192. *Co. Lit.* 380. *Show. P. C.* 153.

¶ 2 *Inst.* 483. *Cro. Eliz.* 127. *Moor.* pl. 132. *Poph.* 178.

\*\* 2 *P. W.* 244. †† 3 *Atk.* 607.

‡‡ *Woodeson*, 3 vol. 453. note. 4 *Bro. C. C.* 510.

cases referred to. §§ If an infant levy a fine, he may declare the uses by deed,\* as the transaction is entire; but if he limit the uses by two instruments, the one during minority, and the other upon arriving at full age, the latter will be the operative deed.†

An infant-male marries an adult female, and the latter before marriage covenants by settlement that her estate shall be limited to certain uses; the husband will be bound by it: for if a woman before marriage convey her property, and agree to settle her general expectations when they fall in, and there is no fraud upon the intended husband, such agreement must be executed, and the baron, when of age, shall answer her contract.‡

It was determined in *Drury v. Drury*,§ upon appeal to the House of Lords, that if a provision be settled upon an infant-feme previous to marriage, in bar of dower, she will be conclusively bound by it under the statute of jointures;|| Lords *Hardwicke* and *Mansfield* observing, that a jointure was not a contract by the wife, but a provision made by the husband, &c. as defined by Lord *Coke*,¶ which obviated the consequences drawn from an infant's incapacity to contract.

By statute 29 Geo. III. c. 31, an infant interested in leases for years or lives, may by himself or guardian, upon petition or motion to the court of Chancery, and an order made thereon, surrender such leases and accept new ones, to and upon the same uses, trusts, &c. as the old were subject to. The fines for renewal and incidental expences are to be paid out of the infant's estate, or else are to be considered as incumbrances upon the leasehold premises.

There are numerous *obiter dicta* in the books, distinguishing between the circumstance when a rent is reserved upon an infant's lease and when not, alleging in the first case that the lease is *voidable* only, and in the second *void*;\*\* indeed, the better opinion seems to be, that the lease will be binding in both cases during minority, but void *ab initio* if the lessor dissent from it at the age of 21, for *non constat* by the mere reservation of rent that the lease is *beneficial*,

§§ 1 Bro. C. C. 152. 4 Bro. C. C. 500.

\* *Bac. Uses*, 67. 2 Rep. 58, a. *Moor*, 22. *Dals*. 47. 2 *Leon*. 159. *Gouls*. 13. *Jones*, 390. *Winch*. 103.

† *Str.* 94.

‡ 2 Bro. C. C. 545.

§ 5 Bro. Parl. Ca. 570.

|| 27 Hen. VIII. c. 10.

¶ 1 Inst. 26, b.

\*\* *Moor*, 105, pl. 248. *Co. Lit.* 308. *Jo*. 157. *Brownl.* 120. *Hut.* 102. *Roll. Rep.* 441. *Mod*. 263. 3 *Mod*. 310.

and since the lessee cannot, in any instance, avoid the contract, on account of the lessor's infancy, it is apparent that the lease can be only voidable.

It has been determined that an infant may make a lease without reserving rent, to try his title in ejectment.\*

If a copyhold be granted to *B.* for life, remainder to an infant absolutely, and both join in a surrender to *C.* who is admitted; if *B.* die, and then the infant, and the heir of the latter enter upon *C.* his entry will be lawful, even before admittance, the surrender by the infant being a voidable act.†

If an infant do a rightful act, which he ought and is compellable to perform, the act will bind him, as if he make *equal* partition *in pais*, or *unequal* by writ,‡ or if he pay rent, or admit copyholders; for, in general, whatever an infant is bound to do by law, the same shall bind him, although he do it without suit of law; because, a right and lawful act is not within the reason of infant-privilege, which is allowed purely for the protection of minors from suffering wrong. Thus, the attornment of an infant to a grant *by deed*, is good and shall bind him, because it is a lawful act; and although he was not compellable to attorn upon a grant by deed, yet, as he might have been obliged to make attornment if a fine had been levied, his voluntary attornment shall have the same effect.§

The transactions of an infant *which do not touch his interest*, but take effect from an *authority* which he is intrusted by law to execute, will bind him; as in the instance of an infant executor (prior to statute 88 Geo. III. c. 87, which extends administrations *durante minori etate* of infants to their ages of 21) duly receiving and acquitting, paying and administering the assets || and in the instance of an infant patron presenting;¶ and also in cases when the infant-head of a corporation joins in corporate acts, or an infant-officer performs the duty of an office which he may hold.\*\* But a power over real estate, which he is intrusted to execute by an individual, if it affect his interest, cannot be conclusively exercised during the grantee's minority.†† *Perkins* seems to intimate an opinion that the grant of a free chapel or presentation cannot be made by an infant under the age of 14, but it has been since settled that his guardian shall pre-

\* 3 Bur. 1806. *Noy*, 180.

† *Co. Lit.* 171, a & b.

‡ 5 Rep. 27.

\*\* *Cro. Car.* 557.

†† 1 Ves. 298. 3 Atk. 695, 710.

† *Cro. Eliz.* 90, pl. 17.

§ *Co. Lit.* 315, a.

¶ 3 Atk. 710.



sent in his ward's name.\* Thus, an advowson was conveyed to trustees upon trust to present such person as the grantor, his heirs or assigns should by deed appoint; Lord King confirmed an appointment made by an infant heir, although it appeared that he was *not a year old*, and that the guardian directed his pen in making a mark and fixing his seal.†

A minor, a mere trustee or mortgagee under the statute of *Anne*,‡ may and is compellable to reconvey the trust or mortgaged estates by order of the court of Chancery, made upon petition of his guardian, or of the person for whom he is seized or possessed in trust, or of the mortgagor, or the person entitled to the money, or the person entitled to the equity of redemption, unto such person as the court shall direct, and he will be bound thereby as an adult. In the construction of this statute, it has been determined, that summary orders, made upon petitions for infant-trustees to convey, must be in the plainest cases, and not in such as are subject to disputes or litigation, as implied or constructive trusts may be; therefore, in instances of the latter sort, the *cestui que trust* must commence a regular suit by bill for the purpose.§ The infant must be a mere trustee *ab origine*, and not made such by subsequent acts; therefore, if an infant be a devisee of lands charged with debts and legacies, and the personal estate is insufficient to pay all, although the infant would be trustee for the unsatisfied creditors and legatees, when the amount of their demands was ascertained by a master, yet he will not be considered as a trustee within the meaning of the above act.|| If an infant heir, trustee, or mortgagee, be a married woman, she will be directed to convey by fine, under the provisions of the statute.¶

The privileges annexed to a state of infancy, being intended as a shield, and not as a sword, will never be permitted to operate as an offensive weapon of fraud or injustice to other persons. It seems, therefore, that if an infant take away wilfully, or under pretence of full age, the goods of another person, trover will lie against him.\*\*

*B.* tenant for life, and *C.* an infant in remainder, levied a fine; *C.* afterwards reversed it as to himself for non-age; *C.* shall not enter upon *B.* for a forfeiture.††

\* *Cro. Jac.* 99.

† 2 *Eq. Ca. Abr.* 518, pl. 3.

‡ 7 *Anne*, c. 19.

§ *Pre. Ch.* 284. 2 *P. Wms.* 549. 3 *ibid.* 387. 2 *Ves.* 559.

|| 3 *P. Wms.* 389, *in notis.* ¶ 3 *Atk.* 479.

\*\* 1 *Vern.* 132. 2 *Vern.* 224.

†† *Leon.* 108. *Cro. Elis.* 124, S. C.

*B.* an infant joint-tenant, before her marriage with *C.* covenanted and agreed, in *articles*, to settle her estate to various uses. *B.* afterwards died under age: the articles shall not amount to a severance of the jointure, for the utmost the infant could do, being a voidable act, if it were allowed to sever the joint-tenancy, she would always be at liberty to say whether the jointure should be severed or not; and if any of the other joint-tenants happened to die during her non-age, the infant might avoid her own act, and resort to her title of survivorship, which would be unjust and inconvenient.\* So note a difference between law and equity, for a feoffment by one of two infant-joint-tenants, will affect a severance until avoided.†

In relation to the question, who shall avoid an infant's conveyance when he dies during non-age, it may be answered, privies in blood and privies in estate: thus, when a minor is seised in fee, and infeoffs; his general heir shall enter: if he be interested as tenant in tail male general, his general and special heir shall defeat his conveyance; the law is the same though the heir be special heir only, and not heir general: thus, if in the case last supposed, tenant in tail had two sons, and the elder had issue a daughter, and the grandfather died, and then the elder brother within age made a feoffment and died without issue male, the younger brother, although not heir general to the infant, but heir male special *secundum formam doni*, shall avoid the deed of feoffment.‡ But privies in law, as the lord by *escheat*, &c. shall not take advantage of infancy, so that if the infant donor in fee die without heirs, the deed cannot be impeached.§ Although it is laid down in *Whittingham's case*, that the reversioner or remainder-man shall not take advantage of infancy for want of privity; yet, *Doderidge*, Justice, denied this doctrine in *Darcy v. Jackson*,|| and said, that he in remainder, and the donor should take advantage of infancy, as it would be unreasonable that a minor's feoffment should injure another person and take away his entry; therefore, if infant tenant in tail come in as vouchee by attorney, the remainder-man may take advantage of the error, for he is interested; and as his right is liable to be affected by ano-

\* 1 Bro. C. C. 113. *notis.* † 8 Rep. 43, a.

‡ *Whittingham's case*, 8 Rep. 43, a.

§ *Palm.* 234; 254. *Roll. Rep.* 401, 442. *Br.* (Entry conceivable) pl. 129. *Dy.* 10, b.

|| *Palm.* 254.

ther's act, it is but reasonable that he should be admitted to shew its insufficiency.\*

With respect to the *judicial* acts of infants, the law pays so much regard to the wisdom and integrity of those persons who preside in courts of justice as to consider all things done there as *ritè acta*, and therefore, will not permit the infant to avoid a fine or recovery levied or suffered by him during non-age, unless he reverses it by a writ of error in minority, in order that the Judges may decide upon the question of infancy by inspection.† But if an infant bring error to reverse a fine for non-age, and infancy be recorded, and before reversal of the fine, he levy another, the first shall not be annulled, because the second, by destroying his right to the land, deprives him of all remedies to recover possession of it.‡

Recognizances and statutes being matters of record, must be avoided by *audita querela* during infancy,§ but in conveyances by bargain and sale, although inrolment in a court of record is made an essential requisite by act of parliament,|| yet as bargainee claims by the deed, he may avoid it as any other common conveyance.¶

As the disability of infancy is created for the benefit of minors alone, it is settled that their engagements during nonage, for necessities, shall be binding; Lord *Mansfield* has elegantly said upon the subject, "miserable must be the condition of minors, excluded from the society and commerce of the world, deprived of necessities, education, employment, and many advantages, if they could do no binding acts. Great inconvenience must arise to others if they were bound by no act. The law, therefore, at the same time that it protects their imbecility and indiscretion from injury, through their own imprudence, enables them to do binding acts for their *own benefit*, and without prejudice to themselves for the benefit of others."

If an infant enter into an engagement to pay for his meat, drink, necessary apparel, teaching, or instruction, &c. he

\* *Roll. Ab.* 755. *Bridg.* 75. *Roll. Rep.* 301. *Cro. Eliz.* 739, pl. 13. *Aleyn*, 75

† 2 *Roll. Ab.* 15. *Moor*, 76. *Co. Lit.* 380. 2 *Inst.* 483. 12 *Rep.* 123. *Yelv.* 155. *Lev.* 142.

‡ *Roll. Ab.* 788. pl. 13.

§ 2 *Inst.* 483. 10 *Rep.* 43, a. *Dy.* 232. *Noy*, 16. *Yelv.* 88.

|| 27 *Hen.* VIII. c. 16.

¶ *24.*

must abide by his contract,\* and the consideration of what is suitable and necessary for the infant is the province of a jury to determine, who will be directed to make proper allowances for his rank and situation in life; but if a person advance money to a minor to procure necessities, whether it has been so applied or not, the creditor cannot recover his debt at law, as the infant was not to be intrusted with the application of the money. However, equity will interfere in those cases, and moderate the rigour of the common law, by permitting the lender of the money to stand in the place of the person who provided the infant with necessities to the amount of their value.† A bond given by a minor in a penalty to pay for necessities will not bind him; for, so far as relates to the penalty, the transaction is obviously disadvantageous to him, and as such an obligation is inoperative, it will not be allowed to merge the debt by simple contract;‡ if the bond were single, the consideration would bind him,§ but when an infant cohabits with and is properly maintained by his parents, he cannot bind himself for what might in other cases be adjudged mere necessities.|| If an infant marry, he will be liable to answer for his wife's necessities procured during the marriage,¶ and as *persona conjuncta aequiparatur interesse proprio*, infancy will be no privilege to exempt him from demands, in consideration of nursing and taking care of his lawful children.\*\*

The contracts of infants being *voidable*, are consequently capable of *confirmation* when they arrive at maturity; common sense, however, requires that the confirming party must know, at the time of confirmation, that he is *sui juris*, and at liberty to avoid the contract, otherwise there can be no pretence to say that the person intends to confirm a voidable deed when he acts under a persuasion that the same is obligatory upon him:†† thus if an adult receive rent,‡‡ or interest, or give a farther security in respect of a transaction during infancy, which he conceived to be binding upon him, those acts will not amount to a confirmation:§§ *contra*, when

\* *Co. Lit.* 172. *Roll. Ab.* 729. *Palm.* 528. *Jo.* 182. *Cart.* 110.

† 3 *Bro. C. C.* 178.

‡ *Roll. Ab.* 729. *Cro. Eliz.* 920. *Moor.* 679. *Co. Lit.* 172.

§ *Lev.* 86.

|| 2 *Bl. Rep.* 1825.

¶ 1 *Str.* 168.

\*\* *Lord Bacon's Max. Reg.* 18.

†† *Br.* "Duress," pl. 14, 20. ‡‡ *Jo.* 157. *Noy.* 92.

§§ 2 *Atk.* 34. 3 *P. Wms.* 293, note. 3 *Bro. C. C.* 117.

these or similar acts are done by an individual cognizant of his rights.\*

R. R.

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*On the Act 44 Geo. III. c. 4, to admit of the issuing of small Notes and Bills of Exchange.*

[IN a former number [No. 8, of your New Series,] you inserted some observations of mine, upon the Loan Act, 44 Geo. III. c. 47,† and, as I am frequently occupied in examining the modern statutes, I shall offer you occasionally such remarks as occur to me concerning them, either with a view to the pointing out of what I conceive to be mistakes in the drawing, or peculiarities not already remarked in the construction of them.

In a commercial country like this, in which the greater part of its trade is carried on through the means of a paper circulation, which has increased of late to an enormous degree, whatever concerns the legal restrictions upon, or the obligations arising out of that paper medium, cannot fail to be highly interesting to your readers, and to the public in general. For this reason, I have examined the statutes which have lately passed with respect to the permitting of the issuing of small notes; and the following remarks have occurred to me.

By the 15 Geo. III c. 51, and the 17 Geo. III. c. 30, it is well known, that certain restrictions, were imposed upon the issuing of promissory notes and bills of exchange, under the sum of 5l. These restrictions, during the last and the present war, have, for reasons which appeared sufficient to the legislature, been occasionally taken off; first by the statute 37 Geo. III. c. 32, and subsequently by 38 Geo. III. c. 7, 39 Geo. III. c. 47, 43 Geo. III. c. 1, and lastly, by 44 Geo. III. c. 4.

By the former statutes, the two first acts of 15 Geo. III. c. 51, and 17 Geo. III. c. 30, were suspended, so far as

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\* Cro. Jac. 320. Roll. Abr. 731. 2 Bulst. 69. Godb. 120. Vern. 132. 1 Atk. 489. 2 Str. 690. 2 Ves. 125. 3 P. Wms. 290, 294, note.

† See *Law Journal* for 1804, p. 169.

they relate to making void notes, &c. under 5l. payable on demand to bearer, until *May* 1, 1797. That act was afterwards continued, and the two acts above mentioned were suspended until and upon the 30th Nov. 1802, so far as relates to any notes, draughts, or undertakings, made payable on demand to the bearer thereof. By the 43 Geo. III. c. 1, the same acts of the 15th and 17th years of the reign of his present majesty, "*so far as the same relate to the making void of promissory notes, or other notes made payable on demand to the bearer thereof for sums of one pound and one shilling and of one pound each*, and also so far as the same restrain the publishing or uttering and negotiating of any such promissory notes, or other notes, as last aforesaid, shall from and after the said 30th day of *November*, 1802, be suspended, until the expiration of six weeks after the commencement of the next session of parliament." This act, therefore, clearly admits of the issuing of such notes for only one pound or one guinea each, but not of other notes, below five pounds, and below or above one pound and one guinea, except according to the statutes 15th and 17th Geo. III. and it was said at the time of passing the acts of suspension, that a paper circulation of that kind was necessary for the convenience of the manufacturers in the great manufacturing towns in the country, where the small bank of England notes had a very limited circulation.

Whether from accident or design, I know not, but in the last act, 44 Geo. III. c. 4, this limitation is omitted, and the continuing clause, s. 1, is expressed as follows: "That an act made the 37th year of the reign of his present majesty, intituled, 'An act to suspend, for a limited time, the operation of two acts of the 15th and 17th years of the reign of his present majesty, for restraining the negotiating of promissory notes and inland bills of exchange, under a limited sum, within that part of *Great Britain* called *England*, which was to continue in force until the 1st day of *May* next after the passing thereof, and which has by several subsequent acts been AMENDED and continued, until the expiration of six weeks after the commencement of the present session of parliament, shall be, and the same is hereby further continued until the 25th day of *March*, 1805. In my opinion, the construction of this act is plainly, that notes may be issued to any amount from one farthing to 5l. and upwards. A friend of mine, however, who possesses somewhat of the subtlety of the *sorbonists* and the ancient schoolmen, has suggested that it was not the intention of the legislature to permit the issuing of notes below one pound or one guinea; because

in the enacting clause, the 43 *Geo.* III. c. 1 is noticed and said to be *amended* and *continued*, and the 1st act of 37 *Geo.* III. is to be *further continued*; and, therefore, he says, it can only be intended to be *continued*, as it was *amended*; for, otherwise the act could not be *continued*, but must be rather said to be *revived*; since it was not in fact *continued* except as to notes of *one pound* and *one guinea*. Whether the expression would be more correct if it had been stated that the act should be revived, I shall not now dispute, but shall only add, that the construction for which I contend is strongly confirmed by the words of the last stamp act, 44 *Geo.* III. c. 98, whereby "Promissory or other notes, or notes for the payment of money to the bearer on demand [which may, within three years from the date thereof, but not at a later period, be reissued], where the sum expressed therein or made payable thereby, shall not exceed one pound one shilling, are made liable to a stamp duty of 3d;" and other and higher duties are imposed on notes for two guineas and upwards, and also on notes of 5l. This clearly shews the intention of the legislature to *continue* or *revive*, the 37 *Geo.* III. c. 32, in its full effect; otherwise, notes for a sum under one pound would be wholly void.

I have offered the above observations to you for the reasons above stated; and I make no doubt they will be found the more useful, as from several persons I have learnt, that notes for small amounts are in circulation, and the bankers and tradesmen who issue them have had great doubts concerning their validity; insomuch that applications have been made to the *commissioners of the stamp office*, who have had also great doubts upon the subject, and have not yet made public their opinion.

In my former communication, I committed a slight mistake in saying of the statute 44 *Geo.* III. c. 47, § 8, that the funds created thereby are made liable to the payment of the income-duty *after* a certain period. It appears, however, from the clause set out there *verbatim*, that it is not expressly made liable to such duty, but is, on the contrary, expressly exempted therefrom up to a certain time, or till the happening of a certain event. I should have added also, that the income act, 43 *Geo.* III. c. 122, § 56, "imposes the duty upon all profits arising from annuities, dividends, and shares of annuities, payable to any person or persons, &c. out of any public revenue;" which it is there said "shall extend to *all public annuities whatever*, except the stock of public companies otherwise charged by that act, and except as therein after is excepted."

These are merely general words, and cannot have a prospective view to other and new funds, particularly not to such as are in their very creation exempted from all taxes. The 44 Geo. III. c. 47, § 8, does not expressly impose the duty, but by implication may be considered to impose it. The other clause, however, expressly exempts it; and though there was a similar clause in all former loan acts, previous to the 48 Geo. III. c. 122, and that exemption was taken away by that statute, yet the exemption in the 44 Geo. III. c. 47, will not be governed by the same rule, because that is itself the latter statute, and has the stronger operation.

Yours,

11th Dec. 1804.

AMICUS.

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WE have received the following Letter, which we insert by way of example, and as a sort of caution against any other of a similar nature.

"I shall consider myself much obliged (if not incompatible with the plan of your valuable publication) by your inserting the following queries in your next number; that some of the subscribers, more learned than myself in the law, may (if thought worth while) answer them. Those are subjects I know to be very familiar to all but a mere novice like myself.

Yours, &c.

Dec. 8, 1804.

INFULSUS.

"In the case of a settlement by husband and wife, of freehold estates of the husband, made after marriage, not in pursuance of articles, is it necessary to levy a fine?

"A debtor discharged under the Insolvent Act afterwards acquiring property, can his creditor issue a *fi. fa.* upon the old judgment (if it has not stood a year), or must he revive the same by *sci. fa.*?

With all our wishes to oblige our correspondents, we are compelled to decline the insertion of any answers which may be offered to these queries. The reason for our doing so the querist has himself anticipated. To admit them would be incompatible with the plan of our work, with the interest of the profession, and with the duties which we owe to it as members of a community. We mean no unjust insinuation to INFULSUS or others, in supposing that they would designedly put to



as questions which they ought to send to others. In this case, we are persuaded the querist, as he expresses it, has mistaken the objects of our work; but we take this opportunity of explaining ourselves, and, we trust, we can give offence to no one.

Not only by giving general advice to *students*, by pointing out plans of study, by marking the excellencies or defects of particular publications, but also by exploring hidden treasures of law slumbering on the shelves of public libraries or in private collections, we hope to be of some service to the profession. We go yet farther: there are many *moot points* which have been deemed *veraxa questiones*, difficulties which have embarrassed the learned, and which, by liberal inquiry, may, through the means of this work, be fairly discussed and, perhaps, happily elucidated. For the discussion of these questions, in separate essays or letters, we shall always preserve a place. But where the questions are really simple, such as every pleader and every counsel at the bar is in the habit of answering daily for a *quiddam honorarium*, or such as we can have any reason to suspect are cases occurring in practice, we cannot admit them. If we did, we should consider ourselves as doing injustice to the profession. For this reason also, we assure our correspondents we shall not answer any questions ourselves.

As we have been in some sort compelled to insert the above letter, in explanation and in justification of our own views, we will now endeavour to make such use of it as may, perhaps, render it not wholly unserviceable to such of our readers as consider themselves, like our correspondent, mere novices. We advise him and them to answer to themselves the following questions.—*On the first query*: 1. What estate is to pass by the conveyance; and from whom? 2. What mode of conveyance is necessary to pass such estate out of the person conveying? 3. What is the purpose for which the wife joins in the settlement? 4. By what means can she effectuate that purpose? 5. What would be the consequence of her not joining?

*As to the second query*: 1. What are the words of the insolvent act alluded to?—Consult the act. 2. What are the purposes and the reasons for which a judgment must be revived? 3. What is the time after which it must be revived?—On these heads consult *Tidd's*, *Sellon's*, and *Impey's Practice*. In less than half an hour the questions will be solved, and *IMPULSUS* will have acquired more information than he would have gotten by our answering *aye* or *no*.

**REFLECTIONS on the STUDY of the LAW.** *In two Parts. Addressed first, to the Nobility and Gentry, as the hereditary and elective Senators of the Nation; and secondly, to those Gentlemen who propose to study the Law, with a View to professional Practice. By Richard Whalley Bridgman, Esq. Author of the Thesaurus Juridicus, Analytical Digest, &c. Brooke and Clarke, Bell-Yard, Temple-Bar, 1804. Small octavo.*

**A**FTER a short preface, in which, however, the author ventures to inform his readers that "every man of letters is interested in the principles hereinafter laid down, inasmuch as the same rules are applicable to the study of every science, with a variation only in the choice of books properly adapted to each individual pursuit:" and in which he also notices his labours in the forming his Analytical Digest, he proceeds to the first part of his Reflections, and, treading very closely in the steps of the late excellent Commentator on the Laws of England in his introductory lecture, recommends the study of the law, more or less, to every man of liberal pursuits, and particularly to those whose rank entitles them, by hereditary right, or as the representatives of others, to an immediate share in the making of laws. Of the propriety of this recommendation no one can doubt; though, if it is meant to imply more than a moderate (and it is difficult to say what is a competent) skill in the existing laws of our country, and a general acquaintance with universal jurisprudence and moral science, perhaps it should seem to require more than can be expected from any who are not practical professors of the law, and do not make it almost the exclusive study of their lives. But while the British parliament remains, what it has been and still is, a free assembly, open for the display of real talents and of useful and of brilliant eloquence; while the members are not wholly sunk in the most barefaced corruption, or degraded into the mere tools of arbitrary power, forming not actually a deliberative body, but a mock senate, tricked out in the garb of counsellors, with the mock insignia of rank and authority, and, in effect, creeping at the footstool of a tyrant's throne, as the mere registrars of imperial, of consular, or of ministerial decrees; emulation alone will secure to this country the continuance of those talents which have hitherto made its parliaments illustrious among the legislatures of all the nations of modern times, and enabled them to rival even the dignity of the Roman senate in its happiest and most prosperous days. We have heard of *Lack-learning* and of *Bare-bones' parliaments*, but they were

not the parliaments of the present reign ; they stand as monuments of the days of turbulence or oppression ; they led the way to wise reformations by their absurdities, and they will only be seen again in times when parliaments will be of little avail, or will exist only in name, and when all dignity shall be wanting among the nobles, and all spirit of true freedom amongst the people. The study of law, as a practical profession, is, in some measure, different from the study of legislative wisdom, and, as we would neither have lawyers excluded from the rank of legislators, so neither should we wish to see all legislators trained to the dry tedious subtlety of special pleading. The powerful orator must be skilled in morals, the sage politician will necessarily be well versed in history, and, together with other liberal studies, will unite a knowledge of constitutional law, for without it he cannot hope to lead a free senate, or win the unbiassed applause of a liberal and ingenious people.

Impressed with perhaps no very high opinion of the importance of exhortations to study, which avail but little without other inducements, the author presses many of the topics urged by *Blackstone* in his first lecture, and proceeds to speak of the means by which the study of the law is to be promoted to the utmost advantage. His proposals are as follows :

“If, in the infant state of commerce, manufacture, and agriculture in this kingdom, five hundred years ago, when the study of the law was simple and of little labour, the reading of public lectures and the performance of exercises were found so truly beneficial to the state, and to the professors of the law in particular, how much more desirable, nay, how much more necessary must the revival of such a mode of instruction be, at the present day, when the code of statute laws has swollen to a mass so burthensome as to become insupportable even by an *Atlas* or a *Hercules*, and to call for the aid of a second *Justinian* to digest, simplify, and reduce them.

To restore the study of the law, then, to its pristine grandeur and elegance, to dispel the gloom which at present hangs over its votaries, and in order that gentlemen of rank, fortune, and superior education may find an asylum where they can associate together, and acquire a fundamental knowledge of the laws and constitution, without falling into the trammels of error ; where they can have the aid of proper preceptors, and qualify themselves both for the senate

and the bar; the nobility, gentry, and the professors of the laws of England, are hereby invited to promote and assist in the formation and establishment of a *Legi-logical Institution*, to be founded in London, as near to the seats of justice as possible, to be furnished with a complete and noble library, to consist of handsome and proper rooms for the accommodation of the students, with a public hall capable of being used as a lecture-room or a refectory, to be regulated by domestic rules laid down by common consent, yet freed from all academical restrictions, where lectures may be read and exercises may be performed, where students may have the assistance of their private tutors without interruption, and where they may at all times associate with those of their own rank and condition. Such an institution would not only become a national honour, but would prove an everlasting nursery to supply the great offices of state, and the venerable benches of Westminster Hall with gentlemen well qualified to fill such important stations, after having passed through the wilderness of study with effect, and perhaps distinguished themselves as able and eloquent orators at the bar.

"The interior of the proposed establishment, such as the building and domestic regulations, must necessarily await the judgment and consideration of those who may chuse to embark in so patriotic and national a concern; in the mean time, an attentive perusal of the preceding reflections is most seriously recommended to the nobility and gentry of this realm, and to the professors and students of the law in particular."

After this part of his work follow what are called, *Further Thoughts on the Study of the Law*. These are addressed to the students who are intended to become professors or practisers at the bar. Of these the author says,

"In addressing the students of the law, we shall consider ourselves as discoursing with five distinct classes of our readers, to whom we propose severally to present ourselves: *first*, to those who desire to ground themselves in the pure, elementary, and fundamental principles of the law, with a view to render moot points familiar to their understanding, and as Lord Coke very correctly observes, 'to blend the reason of the law with their own natural reason, so that they shall comprehend it as their own.' *Secondly*, to those who propose to direct their particular attention to practice in the courts of *Common Law*, and at *Nisi Prius*. *Thirdly*, to those whose views are directed to the practice of the courts of *Equity*. *Fourthly*, to the candidates for a profound knowledge of the *Crown Law*. And

fitly, to those who wish to qualify themselves for the practice of the *Quarter Sessions*, or to become intimately acquainted with *Justiciary* proceedings, and with the laws relating to the *Settlement of the Poor*, and other *parochial* matters.

"Distinct and separate as these objects may appear, the student will find it essential to court and keep up *some acquaintance* with them all. And we most sincerely hope, that to whatever branch of the law the student means to direct his *most particular* attention, with an intent to practise, he will at all events see the indispensable necessity of considering himself a devoted member of the first class we have described, for without a well-grounded theory, he will find that he cuts but a very sorry figure in practice."

The author then proceeds to give particular directions concerning the making of a common place book. For this he prefers the method which *Locke* describes to *M. Toignard*, as a new and easy method, by which an index of two pages is sufficient. Of this we shall have occasion to speak hereafter, when we come to notice Mr. *Bridgman's* Analytical Digest; at present, we shall only observe, that for general purposes this method is excellent, and may also be very useful for the arrangement of any detached thoughts, or original observations, which the student may have occasion to make; but, perhaps, there is a book in great request amongst the best lawyers, which almost supersedes the necessity of making a very copious common place book of the whole law; we mean the Digest of Lord Chief Baron *Comyns*; a work which at once astonishes us by the vast extent of its learning, and the compressed manner of stating the positions extracted from the most voluminous writers, as well as the lucid and excellent mode of arrangement of the different branches of the subject under each head, and its almost never-failing accuracy. Of this work we will venture to say, that he who undertakes to compile or to compose any detached treatise on the law, must revolve his subject long and deeply in his mind, before he shall be able to devise a better arrangement of his materials. We are surprised therefore that Mr. *Bridgman* does not notice a work of such celebrity and such utility. For our own parts, unless Mr. *Bridgman*, or some equally ingenious compiler, shall have formed a more copious and much better analytical digest of the whole law, we shall continue to recommend the practice of adding to an interleaved copy of *Comyns*, a brief reference to all such cases as have occurred since the last edition.\* Though, at the same

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\* This is exceedingly well executed by Mr. *Rose*.

time, we by no means consider the labours of Mr. *Bridgman* in his *Thesaurus* and his *Digest* as useless to the profession; but, on the contrary, we feel them to be highly beneficial. Our reasons for advising this plan are obvious. To the practical lawyer there is scarcely any habit of greater utility than that of easily turning to the pages of a digest, for the case or the point which is to be relied upon as the main hinge of the argument or opinion. To labour upon a well known ground is more easy than to explore an undiscovered tract, and we may well hesitate before we hope to improve what long experience has sanctioned with the stamp of authority. *Locke's* method is, in fact, not analytical, and cannot be so, because it is merely a plan for a common place book to note thoughts, or extracts, or observations, as they occur. Whatever of analytical method is added to it can only be done when the materials are collected, by means of a new arrangement of the several branches under each head, or by a most laboured and unwieldy arrangement of those branches previously, and by drawing out at first an extensive plan which may never be filled up in the life of the student. To say no more of *Locke's* method at present, it is in fact only an *abridged plan of an alphabetical index*, and we must not be misled by our veneration for his great name, to deem it of higher value than it really is; much less to suppose that it affords any magic clue to the sciences, any occult art of lifting us over the laborious heights and toilsome paths of learning. He recommends it only as a brief and convenient method of preparing an index to a blank common place book. Use it in this way, and we recommend it also; but, for facilitating reference to many points, an analytical method is preferable. This, Mr. *Bridgman* must himself confess, by the analytical mode in which he has arranged his own excellent digest. We would, therefore, recommend to the student two common place books. One as a sort of diary or journal after *Locke's* method, the other on the plan of *Comyns*, or some known Digest of good repute, in which his more deliberate and correct notes of concise points for reference may be ultimately noted down.

Much as Mr. *Bridgman* thinks of his own plan of digesting the whole of the law of England, for the improvement of students, he does not omit to give them recommendations concerning the choice of books; and in the five classes into which he has divided his supposed pupils, he mentions the names of several authors whose distinct treatises it will be necessary or convenient to study. Of these in general we also approve. Indeed, we cannot differ, since his list includes

almost all the latest and best publications on the laws of England.

Mr. *Bridgman* strenuously recommends the propriety of taking notes in court, but condemns the use of short hand; from which we plainly perceive that he himself does not practice it with facility, or he would not make the objections to it which he urges. Its utility must be apparent, when it is considered with what ease a skilful short-hand writer takes down the words of the most rapid speaker. Not that this is necessary for a student who takes notes; but, as it enables him to abridge the labour of writing, it allows him more time to reflect on the matter which he is to note down, and, where verbal accuracy is required, renders his note perfect, while that of a common writer leaves too much afterwards to be supplied by the memory. The great impediment to the general use of short-hand, which we almost wish could wholly supersede the use of long-hand, as it would save so much time and labour, is, that it is not sufficiently made the study of early youth, and though it depends upon very easy principles, being no more than a simple alphabet, with not quite so many arbitrary characters as the *Greek* contractions, and read nearly like the *Hebrew* almost without points or vowels, yet has never been able to establish for itself an universal standard, which every one may read.

After summing up the mental qualifications and acquired habits for a lawyer, Mr. *Bridgman* thus concludes :

“ Let not the student of an elevated genius, extensive knowledge, and unwearied application be in any wise discouraged, but rather let him believe, that though the young lawyer's success may at first fall short of what he might promise himself in the heat of his imagination, yet an opportunity will soon present itself, when he may shew the extent of his knowledge, and the closeness of his application; for though we may not rise into eminence quite so soon as our fond hopes may invite us to expect, and though many persons of considerable merit may sink into despondency, because they are not countenanced in an early period, yet a steady perseverance may be found capable to subdue every obstacle.

“ By an adherence to the principles we have laid down, we trust we may venture to assert, that sooner or later the endeavours of the diligent and sanguine student will be successful. The present leading counsel at the bar must yield to the course of nature and the infirmities of age; they must some day make room for their successors; and while we can consider the profession of the law as an honorary and lucrative employment, we must not deviate in any degree from the dignity of our nature, the manners of a gentleman, the rules of honour, or the duties of religion.

"We now beg permission, most respectfully, to take our leave, most fervently and sincerely praying that we may have done the profession, and more especially the rising generation, some service: yet we do not call on the reader to return us his thanks, and with honest *Humphrey Clinker*, to say, 'for what we have received, the 'Lord make us thankful,' but we rather request him indulgently to accept *Non donum, sed donantis animum.*"

We shall remark only that the last paragraph is at least as modest as it is quaint and ludicrous, and that, on the whole, Mr. *Bridgman's Reflections* will probably be consulted, as well as the work of Mr. *Simpson* on the same subject, with advantage by most students. and may be read without danger of misleading them.



*A TREATISE upon the LAW of LEGACIES, by R. S. DONNISON ROPER, of Gray's Inn, Esq. Barrister at Law. The second Edition, with very considerable additions. In two vols. 8vo. Butterworth, Fleet-street; and J. Cooke, Ormond Quay, Dublin. 1804.*

THE author, in an advertisement, thus states his plan in preparing this edition for the press.

"In the second edition of the *Treatise upon the Law of Legacies*, the Author has considerably enlarged the plan of his original work, with a view to render it more extensively useful. Instead of merely stating the principles of the law, with a reference to the authorities, he has added to those principles a short, and he hopes an accurate statement of most of the cases, in illustration of each particular subject. He has not copied the cases verbatim, as they appear in the books of reports, but such parts only as were applicable to the subject under immediate consideration, giving, in general, the judgments of the court at length, from a persuasion that the solemn decisions of judges ought to be set forth in their own language. The author has deviated from this plan in the chapter "Of the Limitation of Chattels," in which he has been satisfied, except in one or two instances, with stating the principles and distinctions only, with a reference to the authorities in support of them. He was induced to do this, in consideration of the elaborate treatise of Mr. *Fearn*, upon Execu-



tory Devises, edited by the late Mr. Powell, where will be found, in detail, most of the cases, the repetition of which in this work the author is convinced would be only increasing the size and expence of it, without being attended with any suitable advantage to the reader. The author is fully aware of the importance and difficulty of his undertaking, but if his humble endeavours to reduce to a system, and bring into one view a subject of such frequent recurrence as that of the Law of Legacies, should be the means of lightening the toils, and facilitating the researches of that part of the profession which is more immediately occupied in questions in this branch of jurisprudence, whilst he solicits indulgence, he will consider his labours as amply recompensed."

This new edition is indeed so much enlarged, that it may be considered as a new work, of which the first edition was only a sketch by way of prospectus, announcing the plan and outline of it to be afterwards filled up at the author's leisure. We recollect, indeed that, when it first appeared, it was so considered by a respectable, monthly critic, who treated it rather as materials collected towards a treatise upon legacies, than a complete treatise. The author has, therefore, wisely adopted the hint thus thrown out to him, and, such is the persevering industry with which he has pursued it, that he has now produced an ample treatise upon a most useful and interesting subject: a treatise so ample that we may safely venture to say, he who reads it will have little occasion to recur to many other books in the English law relative to legacies. This, however, does not exclude the necessity of some occasional reference to the writers on the civil law, whose reputation, in matters of a testamentary nature, stands high, and will ever continue to be so in this and every other country where testamentary dispositions are regarded. We say thus much of the work before us, because it will appear, from the following account of the arrangement of it, and likewise from rather a copious extract, that the plan which the author has adopted aims mainly at two things: first, to lay down the principles upon which, as he thinks, the cases in our English law upon legacies have been determined, and, secondly, to state every one of those cases so fully as, not only to elucidate and explain the principles stated, in the most satisfactory manner, but also to prevent the necessity of recurrence to other works, and to assist the practical barrister with a convenient *vade mecum* to the courts, which may supersede the necessity of loading his notes with a variety of long extracts from a vast number of different books, since in these two volumes he may find all the cases with all the

judgments *verbatim*. With this view, and for this purpose we approve of the plan of the work. It combines, as we have said, two objects. It endeavours to deliver principles concisely, and it sets forth all the cases amply; the statements of which are indeed abridged, but the judgments fully detailed. We have, before, expressed our wish, that writers on the law would condense elementary treatises into a moderate compass, and endeavour to teach law upon principles, rather than by a crude collection of cases; but the present work, though not wholly of the former class, does not fall within that description to which we should object. Its arrangement is clear, and upon the plan which has been adopted, it could not well have been more compressed. In printing, it is an example of one of the closest and fullest pages we have yet seen: inasmuch that it looks rather heavy, and might easily have been extended to double its size and price, by the modern arts of the typographer.

Mr. ROPER's plan and arrangement will appear from the following enumerations of the titles to his chapters and sections.

## VOL. I.

Chap. I.—Of donations *mortis causa*. II. Of specific legacies and the ademption of them. Sect. 1. Of specific legacies. Sect. 2. Of the ademption of them.—III. Of pecuniary legacies and their ademption.—IV. Description of legatees.—V. Of vested legacies. Sect. 1. Payable out of personal estate. Sect. 2. Payable out of real estate. Sect. 3. Of the executor's assent.—VI. Of charging legacies upon the real estate.—VII. Of legacies upon condition; performance, &c. Sect. 1. Of legacies upon condition. Sect. 2. Of the performance of conditions. Sect. 3. Of giving notice of conditions.—VIII. Of the payment and appropriation of legacies. Sect. 1. Of the payment of legacies. Sect. 2. Of presumptive payment. Sect. 3. Of the appropriation of legacies.—IX. Of the abatement and refunding of legacies.—X. Of lapsed legacies.—XI. Of marshalling assets.—XII. Of the repetition of legacies.

## VOL. II.

Chap. XIII. Of the satisfaction of debts and portions by legacies. Sect. 1. Of the satisfaction and release of debts by legacies. Sect. 2. Of the satisfaction of portions by legacies.—XIV. Of legacies to charitable uses.—XV. Of interest upon legacies.—XVI. Of the construction of bequests. Sect. 1. Of the construction of some words familiar in testaments. Sect. 2. Of joint-tenancy and tenancy in

common in personal bequests. Sect. 3. Of the surviving of accrued shares. Sect. 4. "Or" construed "And"—"And" construed "Or." Sect. 5. Legacies to the separate use of married women. Sect. 6. What necessary to raise trusts by implication. Sect. 7. Of mistake or uncertainty in the thing bequeathed. Sect. 8. Of the construction of bequests generally.—XVII. Of the limitation of chattels.—XVIII. Of election.—XIX. Of residuary estates.—XX. Of the jurisdiction of courts in legatory matters.

In order to explain more clearly the manner in which this plan was executed, we shall take the liberty of extracting chapter 1. of donations *mortis causâ*.

"Proper Legacies may be classed under two heads, *viz.* *general* or *pecuniary*, and *specific*. The *first* may be defined, the testamentary gift of goods and chattels or money. The *latter*, the bequest of a particular thing specified and distinguished from all other things of the same kind, as of a house, a piece of plate, or a term for years.

"There is an improper kind of legacy, termed a donation *mortis causâ*, which I shall make the subject of the present chapter.

"*Swinburn* in his book on the Civil Law, divides it into three kinds :

"First, where a person, not terrified by the apprehension of any *present peril*, but moved by the *general consideration of man's mortality*, makes a gift.

"Secondly, where a person, moved by imminent danger, gives in such manner, that the subject is *immediately* made his to whom it is given.

"And thirdly, where a person, being *in peril of death*, gives something, but *not* so that it should be *presently* his who received it, but *in case only the giver die*.

"It is obvious from considering the above divisions of the subject, that the third alone is the proper *donation mortis causâ* generally understood by the term; the other two being nothing more than pure irrevocable gifts *inter vivos*. This is also apparent from the definition of it given by *Justinian*, after the contest which prevailed on the subject subsided. 'Mortis causâ donatio est, quæ propter mortis fit suspicionem; cum quis ita donat, ut si quid humanitas ei contigisset, haberet is qui accepit, sin autem supervixisset, is, qui donavit, reciperet; vel si eum donationis pœnituisset, aut prior decesserit is, cui donatum sit. Hæ mortis causâ donationes ad exemplum legatorum redactæ sunt per omnia: nam cum

Nº. 24. [ D ]

‘prudentibus ambiguum fuerat, utrum donationis an legati instar eam obtinere oporteret, et utriusque causæ quædam habebat insignia et alii ad aliud genus eam retrahebant, a nobis constitutum est, ut per omnia fere legatus connumeretur et sic procedat, quemadmodum nostra constitutio eam formavit, et in summâ mortis causâ donatio est, cum magis se quis velit habere quàm eum cui donat, magisque eum cui donat, quàm hæredem suum.’\*

“This kind of amphibious gift so far participates of the nature or quality of a legacy, that it is *ambulatory* and *imperfect* during the donor’s life, it is therefore revocable, it is subject to debts upon a deficiency of assets,† and it is liable to the duties imposed upon legacies by the last act of Parliament.‡ But in the following particulars, a donation *mortis causâ*, differs from a legacy, viz. It is not within the jurisdiction of the Ecclesiastical Court, it is not to be possessed by the executor; it does not regularly fall within an administration, nor requires any act by or from the executor, to constitute a title in the donee.

“In order to give effect to these donations, there must be an *actual delivery* of the thing intended to be given, or at least the best delivery of which it is capable; for where the thing delivered in lieu of the principal or thing intended to be given, in cases where the principal itself cannot be given, is mere evidence of the principal’s existence, and no property is transferred to the donee by such delivery, or at the utmost a *right of action only* such delivery with a view to the donation *mortis causâ* cannot be supported.

“Upon this principle Lord Hardwicke decided in the case of *Ward v. Turner*,§ that *delivery of receipts for South Sea Annuities*, was not such a delivery of the annuities themselves as they were capable of, and therefore that the gift of them as an intended donation *mortis causâ* could not be established. But he inclined to think, that if a transfer of the annuities had been made to the donee, the gift would have been complete to operate as a donation *mortis causâ*. The case was in substance to the following effect.—*W.* as executor of *M.* claimed specific parts of the personal estate of *F.* and also *South Sea Annuities*, as donations *mortis causâ* made to

\* *Just. Inst.* tit. 7. *De donationibus.*

† *Smith v. Cusn*, mentioned by the reporter at the end of *Drury v. Smith*, 1 P. Wms. 406.

‡ 36 Geo. III. c. 52, s. 7.

§ 2 Ves. 431.

*M.* in his life-time by *F.* The manner in which those gifts were proved to have been made, was as follows—‘ I give you, *M.* those papers which are receipts for South Sea Annuities, and will serve you after I am dead. I give you, *M.* all the goods and plate in this house,’ and a witness swore that *F.* declared to him and another person who alone were present, that he, *F.* gave to *M.* *all his household goods, money, arrears of rent, and every thing which should be found in his house, except his sword, gun, and books.* Lord Hardwicke determined that the gift of the general personal estate of *F.* could not be supported, there being no pretence of any sort of delivery—And with respect to the South Sea Annuities, his Lordship, after taking a minute and accurate view of the *Roman* and *Civil* Law on this subject and of all the cases then decided in the court of Chancery, adjudged that according to each law, delivery of the thing given is necessary to an effectual donation *mortis causâ*, and therefore that the delivery of the receipts for South Sea Annuities, was not such a delivery of the thing given, as to effectuate the gift, and compared it to the case of a mortgage, where a separate receipt is given for the consideration-money, in which case delivery of the receipt would not have been a good delivery of the possession, nor given the mortgage as a donation *mortis causâ* by force of that act. His Lordship was therefore of an opinion, that the gift of the South Sea Annuities was merely *legatory*, and amounted to a *nuncupative* will, which was void by the statute of frauds and perjuries. But he intimated, that an actual transfer of the stock would have been sufficient to effectuate the intended donation. Also in *Miller v. Miller*,\* delivery of a note for 100*l.* to the testator’s wife, the note *not being a cash note, nor payable to bearer*, was adjudged insufficient to pass to the donee, the money secured by it as a donation *mortis causâ*.

“ *Bank notes* being considered cash, and *bonds*, from their particular nature, as securities, have been adjudged capable of such a delivery as is sufficient to constitute a valid donation *mortis causâ*. The former were adjudged so in the cases of *Miller v. Miller*, and *Hill v. Chapman*,† the latter in the case of *Snelgrove v. Bailey*,‡ which was afterwards acknowledged by Lord Hardwicke to be a proper determination in the case of *Ward v. Turner*.§

\* 3 *P. Wms.* 356.

† 3 *Atk.* 214.

† 2 *Bro. C. C.* 612.

§ 2 *Ves.* 431.

“ For the same reason that bank notes are considered as subjects proper for donations *mortis causâ*, it seems that *government securities for money* will be so considered. Upon this principle the opinion of the *Master of the Rolls* in *Jones v. Selby*,\* may be supported, so far as regards the capability of the government tally to be the subject of a donation *mortis causâ*. Lord Cowper, on appeal from the decree at the Rolls, does not appear to have entertained a doubt but that the tally was a fit subject for such a donation, though he reversed the decree under the idea that the gift was not sufficiently proved; or if it had been so, that it was satisfied by the subsequent testamentary provision of the donor. The plaintiff in that case was the relation and housekeeper of C. M. with whom she had lived upwards of 20 years C. M. by his will, made in March, 1702, gave the plaintiff 500l. and about two or three months afterwards being desirous of increasing her fortune, and having a hair trunk, in which were several things of value, C. M. sent for her, and in the presence of two of his servants, spoke thus—“ *I give to my cousin this hair trunk, and all that is contained in it.*” He gave her the key, and bid the servant take notice and remember it; and it was proved in the cause, that he several times afterwards inquired of his servants if they remembered the hair trunk, and once took a candle and shewed it them, that they might remember it. Three years afterwards C. M. made another will, revoking all former wills and bequeathed to the plaintiff 1000l. but took no notice of the gift of the hair trunk, or any thing in it, and died. Four days after his death, upon opening the trunk in the presence of several relations and other persons, there were found in it several rings, pieces of gold, and among other things a tally upon the government for 500l. A suit being instituted by the plaintiff for the 500l. tally and the 1000l. the *Master of the Rolls* decreed them to her, and on appeal from this decree it was contended for the appellant, that the gift being in the nature of a legacy and ambulatory until the death of the testator, he by revoking all former wills revoked also this gift; but if this was not to be so considered, then that the legacy of 1000l. was a satisfaction of the 500l. tally. And that the plaintiff should have proved that the tally was in the trunk at the time of the gift. And of this opinion was Lord Cowper, observing, that these sorts of donations, especially where they were of the same kind with what was given by the will, ought

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\* Ch. Prec. 300.

to be fully proved in all their circumstances, otherwise they ought not to be countenanced, because it would open a way to perjury and fraud, greater than the statutes had provided against.—That the plaintiff had not proved, by any one witness, that this tally was in the trunk at the time of the gift; that if it had been so, surely the testator would then, or when he had occasion so often afterwards, have told the witnesses of it.—That it was strange he should bid them take notice of the trunk, and not mention the tally, which was the principal thing in it.—That all the plaintiff proved, was, its being there *when the trunk was opened*, which was three years after the gift, and four days after the testator's death.—That his Lordship sat there to condemn frauds, and therefore might presume them unless they proved the contrary." The court, however, considered the legacy of 1000*l.* a satisfaction for the 500*l.* tally, and therefore reversed the decree at the Rolls.

"It may be inferred from Lord Hardwicke's reasoning in *Ward v. Turner*, that when the intended gift from its size or quantity is incapable of delivery in specie, delivery of the thing by which possession is to be obtained and the thing used will be considered as such a delivery of the subject itself, as with the other requisites will constitute a complete donation *mortis causâ*. But in all cases of donations *mortis causâ*, the delivery of the intended gift must have a *view to the death of the donor*, or else it cannot be supported.

"Thus in a case\* where *A.* having subsequent to his will, sent for *M.* to his house, and observed that he was worth more than he thought of, and that his fortune was too much for one person, and therefore he would give away more than he had disposed of by his will, desired *J.* to give him out of his desk several bonds and securities to the amount of 5000*l.* and upwards, which he cancelled.—He then told *M.* he would give her 200*l.* and desired *J.* to give him a check out of the drawer of his desk, which he having done, he immediately filled it up, and signed and gave it to *M.*—He at the same time gave *J.* a promissory note for 1000*l.* It was determined upon questions, whether the gifts of the check and note could be supported as donations *mortis causâ* that they could not, as the gifts of them were not made to take effect *in futuro*, with a view to the donor's death, but *in presenti* and *irrevocably*.

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\* *Tate v. Hilbert*, 2 *Ves. jun.* 111.

"Notwithstanding the necessity of delivery, or symbolical delivery, to perfect a donation *mortis causa*, when there is no other evidence of the gift, it seems to be unsettled in our law whether proof of such a gift appearing in writing, as by deed without delivery of the articles intended to be given, is sufficient to effectuate a complete donation *mortis causa*.

"By the Imperial law, it was sufficient,\* and by our own the better opinion appears to incline in favour of the gift.† If therefore such opinion be correct, it may be inferred, that the whole of a person's chattels may be the subject of a donation *mortis causa*, which could not be the case if delivery were always required.

"There is a species of appointment in the nature of a donation *mortis causa*; which may take effect without delivery, as when a person upon his death-bed draws a bill upon his banker, and by writing indorsed upon it, declares that the money is to be applied for the benefit of a person for a particular purpose, which necessarily supposes death, this appointment will be considered in the nature of a donation *mortis causa*, and supported as such. Thus, in the case of *Lawson v. Lawson*,‡ *A.* on his death-bed drew a bill upon a goldsmith, to pay 100*l.* to *A.*'s wife, to buy mourning, and soon afterwards died. It was determined, that the bill was not a mere authority which expired upon *A.*'s death, but operated as an appointment of such a nature as before mentioned.

"In the above case of *Tate v. Hilbert*,§ the Chancellor observed, that the report of the case of *Lawson v. Lawson*, in Peere Williams, was incorrect, as it appeared from the register's book, that the direction for mourning was indorsed upon the bill, in the donor's hand-writing, and his Lordship approved of the decision."

In the course of our perusal of this work, we noticed the case of *Griffiths et Ur. v. Vere*, Michaelmas Term, 43 Geo. III. [*Roper on Legacies* Vol. 11. p. 397.] a very important decision on the statute 39 and 40 Geo. III. c. 98, and which was very speedily and very fully reported, as many of our readers will recollect; in the *LAW JOURNAL*, by *Williams*, Vol. 2. p. 488. yet Mr. *Roper* has omitted to refer his readers to this or any report of it: although after judi-

\* *D. L.* 39. tit. 6. l. 28.

† *Johnson v. Smith*, 1 *Ves.* 314. *Tate v. Hilbert*, 2 *Ves. jun.* 111.

‡ 1 *P. Wms.* 441.

§ 2 *Ves. jun.* 111.



ciously abridging the statement of the case, he gives the judgment of the LORD CHANCELLOR precisely as it is stated in that report, without varying in a single letter. This omission we consider as an extraordinary, not to say a *singular* negligence; which, however, we have too high an opinion of Mr. *Roper's* candour to suppose could have happened from any thing but accident; at the same time that justice to Mr. *Williams* or his then assistants obliges us to say, as he could not desire that others should be answerable for his errors, so neither ought they to omit to ascribe to him the merit of his own labours. *Suum cuique tribuere* is all that is expected, and he has a right to demand it.

To conclude, we shall only observe, that those who think with us, upon the nature of legal publications, will have reason, to thank Mr. *Roper* for the very useful additions now made to his treatise, and which evince great labour and judicious industry; but our opinion of Mr. *Roper's* judgment and discrimination, and of his other powers and acquirements as a lawyer, were raised sufficiently high by his two former publications; in which were plainly to be perceived those powers of the mind, which were necessary to the completion of his present task.

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*Circular Letter to the Lords Lieutenants of Counties.*

WE insert the following circular letter, as we conceive that it may further the purposes for which it has been made public by government, and tend to correct any mistake which may have been generally entertained upon the subject.

“ MY LORD,

*Whitehall, Dec. 1804.*

“ I beg leave to represent to your lordship, that much mischief is likely to arise from the frauds committed by issuing of counterfeit silver coin, chiefly brought from Ireland, and frequently stampd, the better to deceive the public; and from an erroneous opinion having prevailed that, because it was once circulated in Ireland (though since suppressed there), it is now not unlawful to circulate it here.

“ In order, therefore, to stop the progress of this evil, and to give efficacy to the laws for the punishment of persons uttering counterfeit coin, knowing it to be so, particularly the act of the 15 and 16 *Geo. III. c. 28*, I am induced to request that

### 32 Circular Letter to the Lords Lieutenants of Counties.

your lordship will earnestly recommend it to the magistrates, in their several districts in the county of —, to give notice to the public that large quantities of such base coin are in circulation; that such circulation is an offence against the laws; and to recommend it to traders and others to secure the parties tendering such money, and also the counterfeit money tendered, so as to identify it; stating, at the same time, in such notice, that, on the application to a magistrate (in case the facts can be sufficiently proved,) the offenders will be prosecuted by the solicitor to his majesty's mint, at the public expence, and in that case a reasonable compensation will be made, for the loss of time and trouble of the witnesses in such prosecution.

“To facilitate this mode of proceeding, and the better to enable the magistrates to carry it into effect, I beg leave to add, that in any particular cases brought before them, where-in they may be desirous of obtaining further information, they may receive it, upon communicating the circumstances of such case to John Vernon, Esq. of Lincoln's-inn, the solicitor to his majesty's mint.

“I think it proper to add, on this occasion, that in the case of any quantity of counterfeit coin being found in the possession of any person, it will be expedient to seize such coin, and to make immediate communication thereof to the solicitor of the mint, who has express orders to attend to such communication; and, in the mean time, it will be proper to commit the person for further examination.

“I have the honour to be &c.

(Signed) “HAWKESBURY.”

“To his majesty's lieutenant of——”

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*The subscribers to the Law Journal, are desired to inform their binders, when they send the several divisions of the work to be bound for 1804, that the first leaf of the Original Communications, cuts off sheet C. in the Abstracts of Acts. There is no signature, B. or C. in the Original Communications.*

In our introduction to the Succinct View of the Law of Infancy, ante page, 3, we have by mistake said that Mr. Watkins's work, entitled Principles of Conveyancing is out of print; we understand since that it has been lately reprinted. Our readers will observe that the positions stated by our old correspondent were not all assented to exactly, by the writer of the Succinct View, of the Law of Infancy, they will notice this particularly in what is said of the case of *Zouch v. Parsons*.

Correspondents in our next,

*A concise View of the Law or Custom of Gavelkind, in Kent.*

HAVING received the following concise View of the Law or Custom of *Gavelkind*, in *Kent*, from an anonymous correspondent, of whom we have no knowledge, we insert it. As the writer has not given any reference to authorities, we have ventured to insert a few as to the material points, rather than wait his corrections for that purpose, which could only have been obtained through the medium of notice to him in the last page of our number, and would have occasioned a delay of a month or two.

*Gavelkind*.—Before the conquest it seems all lands in *England* were of the nature of gavelkind, which is supposed to resemble what was called by the *Saxons*, *Bockland*; but, after that period, when knight's service was introduced, the descent was generally restrained to the eldest son, for the preservation of the tenure, except in *Kent*, where the conqueror (for the supposed reason of which see *Robinson on Gavelkind*) confirmed to the Kentish men their ancient laws and privileges, some of which, particularly that of *Gavelkind*, still remain.

*Gavelkind* is denominated the common law of *Kent*,\* because it extends through the whole county, and the proof of the custom is not, like other customs, turned upon him that would take advantage of it; for all lands in *Kent* are presumed by our courts of law to be of the gavelkind tenure till the contrary is shewn; which is a favor that is not allowed to gavelkind land in any other county.

All lands in *Kent* are, at the present day, *Gavelkind*, except such as have been disgavelled by particular statutes, and such as were formerly holden by ancient knight's service. The custom extends to the profits arising from a fair or market, holden on gavelkind land, and arising by reason of the soil; so of a rent issuing out of and charged upon gavelkind land.† It seems that parsonages, tithes, &c, that came to the crown upon the dissolution of monasteries, are not within the

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\* 1 *Sid* 135. 138.

† 3 *Lev*. 87. *Mod*. 96, 97. *Bro. tit. Custom*, 58, *contr.*  
*Nº*. 25.

custom, since they are new inheritances, and were, within time of memory, duties merely ecclesiastical, collateral to the estate of the land and no part of the old lay fee. A remainder, being but the residue of an estate in the land, naturally follows the descent of the land. So an use shall follow the nature of the land out of which it issues, it not being a thing newly created, but the old use modified by the statute of uses, and modern determinations; and it is the same at present of a trust.

Gavelkind is an ancient soccage tenure, and it appears to have embraced as one of its privileges, in *Kent*, at least, the power of devising by will previous to the statute rendering valid devises of real estates, and it is at present a customary tenure that runs with the land, and is not altered by a fine or recovery levied or suffered thereof at common law.

The descent of gavelkind lands, in the right line, is among all the sons equally, who inherit as sisters do at common law: and although females cannot inherit with men, in their own right, yet they may *jure representationis*; and therefore if a father has three sons, and one of them dies in his lifetime, leaving issue a daughter, such daughter shall inherit the part of her father, *jure representationis*, although she is not within the words of the custom, of dividing the lands between the heirs male, for she is the daughter of a male, and heir by representation. If an estate is conveyed to the father and the heirs male of his body, the daughter is excluded *per formam doni*; but the custom, making the land descendible to the heir male, makes room for the representative of him, and indeed, if the father makes a purchase after the death of a son, the representative of that son shall nevertheless take.

In the collateral line, the rule of descent is preserved the same. For, when one brother dies without issue, all the brothers shall inherit, and in default of them, their respective issue shall take *jure representationis* and *per stirpes* and not *per capita*.

The custom of gavelkind is not confined to inheritances in fee simple only, for it reaches estates tail, and though an estate tail is a new kind of inheritance introduced by the statute *de donis* within time of memory, yet if a man die seised of estates tail either general or special, all the sons shall inherit as heirs of the body.

But, where a lease for life is made of gavelkind land, remainder to the *right* heirs of A. B. who hath issue four sons; in this case, the eldest son shall inherit the remainder, because,

in the case of purchase, there can be but one *right* heir, and the eldest son accordingly takes as such.

The custom likewise extends to descendible freeholds, as in the case of a lease to a man and his heirs, *pur auter vie*, all the sons shall inherit, as the special occupants, upon the death of the lessee.

Copyhold lands, also, come within the scope of the custom of gavelkind, and, consequently, all the sons are entitled to admission, upon the death of the father intestate.

The half blood shall not inherit gavelkind lands, although this seems formerly to have been doubted.

The entry and seizin of any one gavelkind heir is the entry and seizin of all, unless indeed he does not claim generally, but the whole to himself.\*

Gavelkind heirs however are incompetent to take advantage of a condition or warranty annexed to gavelkind lands, for this only can be done by the perfect heir, the heir at common law.†

And besides the general qualities before stated, there are several special or particular customs incident to gavelkind lands in *Kent*, and which are to be pleaded as specially as other customs; for a bare allegation of the lands, being of the nature of gavelkind, will not be sufficient in regard to them, as it is with respect to the general custom of partibility. These special customs seem not properly incident to, or inseparable from the nature of gavelkind customs in general, but are, by immemorial usage, annexed to land of this tenure in the county of *Kent*, equally with partition; and indeed they are in some respects preferred at present to the general customs, since they still continue to take place, even when the lands have been disgavelled.‡

The special customs are principally these; 1st, that the husband shall be tenant by the curtesy, but of a moiety of his wife's inheritances in gavelkind, which is less in quantity than the curtesy of *England*; but then it is obtained on easier terms, for the having a child is not necessary to entitle the husband to it, as he is equally entitled whether he has

\* 1 Bl. Rep. 678.

† This, it must be presumed, is meant only of a condition in gross, and not of a condition incident to a reversion. For of the latter the heirs in gavelkind may take advantage; and when the heir enters for the former, the younger sons shall enjoy the land with him. *Bacon's Abr.* vol. 3, 365. Edit. 1798.—Editor.

‡ 1 Sid. 77. Cro. Car. 562. Raym. 76. 1 Lev. 79. Hard. 325.

children or not, during the time that he lives unmarried: but as soon as he marries again, he forfeits his tenancy by the curtesy.\*

It is stated in some books, that a husband, surviving his wife, is, after issue had between them, by the custom of *Kent*, entitled to the whole of her gavelkind lands; and that, in such case, the period of enjoyment is not restricted to his marrying again: this however is erroneous. See *Robinson gavelkind*, 135, &c. and the authorities there cited.

A tenant by the curtesy cannot commit waste any more than such tenant by the common law.†

The next special custom is, that the wife of a man dying seised of gavelkind lands shall have a moiety thereof for her dower; but she is not entitled to this absolutely for life, but holds it only so long as she lives unmarried and chaste; if therefore she afterwards marries again, or commits fornication in her widowhood, she loses her dower:‡ however the presumption of her chastity continues till she can be proved to have been delivered of a child got during her widowhood.‡

A woman has the same remedies for her customary dower in gavelkind as she has for her dower at common law; and it has been adjudged, that the widow cannot have her election to demand her thirds or dower at common law, so as to avoid the custom and marry a second husband.§

Any forfeiture, before mentioned, by either a tenant by the curtesy or tenant in dower, determines the estate *ipso facto*, and not only the heir but any stranger interested may take advantage of it.

The next special quality is that the guardianship of an infant heir continues till he is 15 years of age; for if a tenant in gavelkind die, leaving his heir or heirs under the age of 15, the next of blood to whom the inheritance cannot descend, shall (by the appointment of the lord, if there are several unequal degrees of kindred), have the custody of the body, lands and goods of such infant heir, until he attain that age; but the power of appointing a guardian by the lord is now never exercised, as it falls at present more within the province of a court of equity.¶ And it is not safe for the lord to exercise his ancient privileges, because he is bound on all occasions to call the guardian to account; and,

\* *Co. Lit.* 30, a. 1, 11, a.

† *Ibid.*

‡ *Rob. Gav.* 165.

§ *Savil.* 91. *Leonard*, 83.

¶ *Lambard*, 611, 612, 624; *Bac. Ab.* 1798, vol. 3, p. 391.

If he does not see that the accounts are fair, he is bound to answer it.

Although, in the instance of wardship, the custom puts some confinement on the heir, by extending the time one year longer than the common law, yet, in amends, a singular favour is allowed him afterwards, which is, to sell his lands for a valuable consideration at any time after he has attained the age of 15; but the mode of alienation must be by feoffment with livery of seizin, *propria manu* of the infant, and not by letter of attorney; and it seems the custom does not extend to a lease and release, bargain and sale, or any other sort of conveyance or assurance besides a feoffment; nor does it enable the infant to make a will, or grant a reversion on an estate for life, for that does not lie in livery. *Robinson*, however, holds that, when the infant is not in actual possession and seizin of the lands, the custom will, notwithstanding, warrant him, at the age of fifteen to release his right in the lands to him in possession of the freehold, and cites authorities to this effect; so that it seems an infant may release the fee to his guardian holding over, or to a tenant for life, or may release a mere right to one that has a defeasible estate, and who has seizin already; although he cannot alien an estate in possession by any other means than by a feoffment, nor convey a reversion to any one but him in possession of the freehold.

It does not appear, from *Robinson*, that the alienation is confined to a sale; but it has been stated by some that it must be upon a sale, for a full and sufficient recompense; which is now the principle generally acted upon; and an infant never aliens but upon having a valuable consideration, and this generally in money, which greatly repels any presumption of the infant's being wronged or imposed upon.—But this, which is a custom derogatory of the common law, must be construed strictly, and therefore the sale must be of lands coming by descent, and not by purchase; because the infant's purchase could not be a subject matter for the custom; for the conqueror must, as is said, be presumed to confirm nothing but a privilege that is immemorial. This is, however, a conclusion which Mr. *Robinson* seems to think too hastily drawn; but, I believe, it is a principle that still governs the construction by the custom at present.

The next and last property that I shall mention is, that these lands are not forfeitable for felony, nor is the king entitled to his year, day and waste on an attainder of felony; but for high treason, which strikes at the foundation of all government and policy, these lands are forfeitable, and so

they are where a man is outlawed or abjures the realm.\* Upon the execution of a man for felony the customary heir enters, and the widow becomes entitled to her dower.

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PRACTICAL POINTS, or MAXIMS in CONVEYANCING, drawn from the daily Experience of a very extensive Practice. By a late eminent CONVEYANCER. To which are added, CRITICAL OBSERVATIONS, on the various and essential Parts of a Deed. By the late J. RITSON, Esq. London, Clarke and Sons, 1804, pp. 147. Octavo.

“THE observations and opinions which are the subject of the following sheets,” says the *unknown editor*, “were those of a late eminent conveyancer. The original manuscript was corrected by himself (we presume not for the purpose of publication), and since revised and *examined* by the late J. Ritson, Esq. from whose collection it fell into the hands of the present editor.

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\*In *Bacon's Abridgment*, Edit. 1798, Vol. 3, p. 361, this qualification as to *gavelkind* lands is stated as follows:

“These lands are not forfeitable for felony, but for treason they are; for the feudal forfeitures only held in lands where there were tenures, and not in the allodial property, of which nature is *gavelkind* lands; and the allodial property was only forfeitable according to the *Roman* civil law for the *crimen læsæ*; *majestatis* and therefore the clergy, that were judges with the earl, never allowed this land to be forfeited, but for the crime of high treason: but subsequent statutes comprehend *gavelkind*, because such laws extend to the whole lands of the kingdom, unless *gavelkind* were excepted; but if a man be outlawed, or abjure the realm for felony (a), he shall forfeit his lands in *gavelkind*, and his wife her dower in them; and though the strictness in which the custom is to be taken, because derogatory from the common law, is usually given as a reason for this construction, yet the true reason is, that outlawry and abjuring the realms are punishments introduced since the conquest, and consequently since the establishment of *gavelkind* in *Kent*, and therefore, like other new laws shall extend to that custom. *Lamb.* 610, 611. *Bro. tit. Custom*, 54.

(a) *Gavelkind* lands in *Kent*, belonging to felons, revert to the heir after the year and day. 17 E. II. st. 1, c. 16. If outlawed or abjured, the custom does not prevail. *Dyer*, 510, b. in the margin.



"The tract on the various and essential parts of a conveyance is the composition of Mr. *Ritson*, and it is well worthy of an attentive perusal.

"The editor submits the whole of the following pages to the professors and students of the law; to the professor, as a useful hint to aid his recollection; and to the student, as a brief, but instructive selection of maxims, which he may turn to great advantage by a diligent reading, and to a much greater, by interleaving his own copy with writing paper, and making it his common place book, adding thereto his experimental observations from the best authorities. Thus, in process of time, the student, in the course of his legal career, will find himself in possession of a collection of notes, so useful to him in his future practice that he will ever afterwards feel an involuntary emotion of gratitude towards the memory of those gentlemen whose labours have been so industriously and so worthily bestowed."

We feel it extremely difficult to describe this book, otherwise than as a printed copy of a loose *common place* book for practical purposes, made by some conveyancer for the assistance of himself or his pupils, to whom, as is frequently the case, he had not leisure, in the hurry of practice, to give much oral instruction. The reputation of the compiler has given it, probably, credit amongst those who were educated in his office, and were therefore trained, like most scholars, to look with reverence and wonder at every thing that came from the hands of the master. It is probable, that amongst these, in the days of his youth, was Mr. *Joseph Ritson*, at a time, when, perhaps, he treated the opinions of others with more respect and deference than towards that latter period of his life, when he was crossed with the severity of the critics, with whom he was often in hostility, and unhappily was verging towards a state of mental disorder of which his strange notions concerning vegetable diet may be considered, in some measure, as a predisposing symptom. At the sale of his books, probably, this amongst the rest was knocked down to the highest bidder; and from the hammer it has got to the press. We do not say that this is the *true* history of the publication, we speak only from conjecture, we are not in the secret, any more than our readers; but, as the editor is *anonymous*, as well as the original compiler, conjecture and probability are the only authorities which we can have recourse to. For thus leaving us in the dark, as to the experienced conveyancer who compiled it, we think the editor is much to

blame; because, as the points are practical, and as the editor says, "*derived from the daily experience of a very extensive practice, by a late eminent conveyancer,*" and as they are stated broadly and decisively in most instances, or "Mr. — was of opinion so and so," without any citation of authorities, we think the purchasers of the book will generally be inquisitive to know who his *eminence* was. *Omne quod ignotum promag-nifico* is, however, an old maxim which we, in behalf of the editor, must recommend to our readers, and leave them to settle by internal evidence which of the *Booths*, the *Fearnes* the *Duanes*; and others great in their day have left to the world this little manual of practice, for the benefit of posterity; for, without longer descending into irony or levity we must admit that it bears internal marks of having been the work of one who had a great deal of practice.

In this belief, we do not object to the publication of it, and the use which the editor recommends, to make it a sort of guide for a practical *common place* book, is judicious. To this, therefore, we will add only, that, as to all but the merely practical hints, the young student will do right to ponder the points well and examine the authorities in other writers, to see the reasons and the grounds for them, before he implicitly adopts them upon anonymous information. Not that we mean that they are wholly, or in any considerable degree, incorrect, further than as they are brief and concise, and may, therefore, be liable to be misunderstood or misapplied; but that we would always recommend a habit of inquiry and investigation, by which much is to be acquired; whilst by implicit faith and lazy acquiescence very little can be learnt.

Without a few specimens of the articles, called in this little work, points, it will be impossible for our readers to form any judgment of the nature of it. We therefore insert the following.

**" BANKRUPTCY—Of the effect of an act of bankruptcy upon a title.**

" 12. Where it is apprehended that a person has committed an act of bankruptcy, a good title to a real estate cannot be made to a purchaser; for a creditor for above 100l. may sue out a commission at any time within five years after the act of bankruptcy, and set aside the purchase. If the commission is once dealt in, so far as the examination of a single witness, it may be proceeded in notwithstanding the bankrupt's death.

"19. Lord *M.* paid off some of the debts and incumbrances of *I. S.* and consequently he stood in the place of the persons so paid; but as there was some doubt whether *I. S.* had not committed an act of bankruptcy before he contracted some of the incumbrances which Lord *M.* so paid off; and whether his lordship would not be obliged to come in with the creditors *pro rata*; great hazard attends [attended] his lordship becoming a purchaser from *I. S.* How a protection against secret acts of bankruptcy may be framed, *vide Term* for years, pl. 187. Which is as follows:

"187. A person having freehold lands, and going into trade, it would not be improper for him to create a long term for years, which might be a protection to a mortgagee or purchaser against any intermediate incumbrances or secret acts particularly those of bankruptcy."

We shall briefly observe, that, though the reference to this *placitum* 187 leads us to expect some notable *recipe* to defeat the effect of the bankrupt laws, which perhaps in cases of purchase and mortgage sometimes bear rather hard upon honest men who advance money upon landed security, yet the passage above cited turns out to be only the conjectural, and we may add, doubtful suggestion of the conveyancer, who has not expressed the precise mode in which such a conveyance ought to be made. Without this, however, we doubt whether it would be effectual.

As there are few things in which there is more accuracy and skill required than in making a good *will*, our readers, perhaps, will thank us for treating them with the directions of this conveyancer on that head, and with that article we shall conclude our extracts from this part of the work.

"*WILL.—Directions for preparing a will.*

"201. Where a testator's personal estate is dispersed or precarious, and legacies are intended for younger children, and the eldest son is to have the residue, a particular legacy, the supposed amount of the residue, should be given to the son, and afterwards the residue given to him, for by this means, in case of any deficiency, all the legacies must abate in proportion.

"202. Where by a will the real estate and the residue of the personal are given to the same person, it is proper to give the personal, exempt from the payment of debts; and where it is intended that debts should be paid out of the

personal estate, so far as the same will extend, and the deficiency made good out of the real estate, it is proper first to make a provision out of the real estate, for the payment of the debts, and afterwards to declare that the personal estate shall be applied as the same shall come in and be received, either in payment of debts, for the time being unsatisfied under the trusts aforesaid, or in exonerating the real estate from all principal sums charged thereon, by virtue or in pursuance of the will.

"203 Where a testator intends an equal distribution of freehold lands amongst his children, it is improper to split the lands into many undivided shares, because the decease of one of the children, leaving an infant heir, prevents or obstructs the alienation; the right way is to give the land to one, subject to the payment of sums of money to the others, or to give the lands to trustees in trust, to sell and to pay the money in the proportions intended; and the most safe way, in case of infants very young, is for trustees to place the money upon government securities.

"204. Where by a will several estates are given to several persons, subject to a sum of money, to be raised out of all the estates, for paying debts and other purposes of the will, the right way is to devise the lands to the use of trustees in trust, to raise a certain sum, stating the *quantum* to be raised out of each estate, and to direct so much of the money as shall not be applied, to be paid to the person out of whose estate it was raised, in such and such proportions. By directing a certain sum, a mortgagee is safe, for otherwise it might happen, (if the personal estate was first to be applied) that no money could be raised till after the personal estate was ascertained and appropriated, which might not be done for many years, nor without a decree in Chancery. The personal estate may be directed to be applied in payment, &c.

*"The execution of a will improperly attested must be determined by a jury.*

"205. A will attested in the following words, "signed, sealed, and delivered," or "signed, sealed, published, and declared in the presence of us," the due execution of the will is a matter of fact, which must be determined by a jury; most probably the jury would give their verdict in favour of the will, and that the judge would so direct them, as the whole current of determinations in this point are in favour of the will.

*"Defects in the limitations of a will.*

" 206. Mrs. P— by her will, devised lands to the use of trustees in trust, to pay the rents to her daughter for life, remainder upon such trusts as her daughter should appoint, and for want, &c. *to the use of A. and B.* (this is improper, for it should be *in trust for A. and B.*) the younger children of her daughter, living at her decease, their *heirs and assigns*: this is also improper, for it should be settled on the younger children in tail, with cross-remainders in tail, and remainders over.

*" Will of a tenant in tail.*

" 207. Tenant in tail of lands in the county of Durham being dangerously ill, was desirous of making his will, and devising these lands; the way is, to execute the conveyance, making a tenant to the præcipe, and to sign the warrant of attorney one day, and to execute the will the next, for in that case, if he lives till after the recovery is arraigned, though he should be insane, yet according to a determination in *Burrow*, the will would be good. If an old intail descend to the sick person, to which many persons then in being and their issue are inheritable, a fine would create a fee, which would have continuance so long as there should be any such issue inheritable to the latest posterity, and in that case a fine might be more proper than a recovery, because it might be levied of a preceding court.

*" How trusts should be decreed.*

" 208. The legal estate of freehold lands may be devised, but the intention must govern; for if a man makes his will, and gives all his *messuages, lands, &c.* that alone does not include all legal estates in him; but if he gives *all other his real estate*, it does, except indeed his intention appears very plain to the contrary; as if it be in trust by mortgage or sale to raise money, &c. the testator should devise to his executors all such estates as are then in mortgage to him; and it is proper to devise all such estates as he is seised of in trust, lest the trust estates, being undevised, should descend to an infant heir or married woman.

“ *Revocation in toto or pro tanto.* ”

“ 209. A. devised lands, held by lease *for lives*, and afterwards renewed the lease: this is a revocation of the will, as to the leasehold.

“ 210. A. devises all *his estate, term, and interest* in a leasehold for *years*, and afterwards renews the lease: a doubt may arise, whether the lands pass or not, as the words *estate term* and *interest* seem to be confined to such *estate, term, and interest* as he had in the lands at the time of making his will; therefore the most proper way is to devise his lands “ during all such estate, term, and interest as he shall have “ therein at the time of his decease,” which would be good in case the lease was renewed afterwards.

“ 211. A. devised lands to B. C. and D. in trust, and afterwards made a lease of those lands, or part thereof, to B. to commence after the decease of A.: this is a revocation of the devise to B. as to the lands leased. So if the lease was made to commence in A.’s life-time, upon his decease the term merged in the fee; to prevent which, the right way is for A. by a writing under his hand, to recite his will, and direct his trustees, within a year after his decease, to make a lease for years, to a trustee in trust for B. upon such and such conditions, (stating them) which it shall be at the election of B. to accept, on executing the lease, and on entering into such and such covenants, stating them.”

That part of the work which belongs to Mr. Ritson is entitled *Critical Observations on the various and essential Parts of a Deed*. It contains observations upon the following words:

‘ This Indenture’— ‘ made the       day of’— ‘ in the       year of the reign,’ &c.— ‘ by the grace of God,’ &c.— ‘ defender of the faith, &c. — ‘ and so forth’— ‘ and in the Year of our Lord,’ &c.— ‘ whereas, the said,’ &c.— ‘ witnesseth, that in consideration,’ &c.— ‘ the receipt,’ — ‘ he the said C. C. hath granted,’ &c.— ‘ and by these presents doth grant,’ &c.— ‘ bargain, sell,’ — ‘ release,’ — ‘ and confirm,’ — ‘ all that, the manor or lordship or reputed manor or lordship of,’ &c.— ‘ woods, underwoods’— ‘ which said, &c. are now in the actual possession’— ‘ by virtue of a bargain and sale’— ‘ in consideration of 5s.’— ‘ in and by one indenture’— ‘ bearing date the d y next before the day of the date of these presents’— ‘ and by force of the statute made for transferring uses into possession’— ‘ and all the estate,’— ‘ have and to hold’— ‘ to the use’— ‘ that

for and notwithstanding any act,'—'seised in fee of and in a good estate of inheritance in fee-simple'—'good right'—'trust'—'covenant for further assurance'—'for quiet enjoyment,'—'indemnified, claiming by, from, or under him'—'title of dower,'—'counsel learned in the law'—'hands and seals'—'sealed'—'and delivered'—'in the presence of us.'

As a specimen, take the following article :

"Whereas, the said, &c.

"In some cases a recital may amount to a grant, or have the same effect. 14 *Viner*, 52.

"A recital of itself is nothing, but being considered and joined with the rest of the deed, is material; and so a recital, *that whereas*, he is possessed, &c. amounts to an *agreement* or undertaking that he is possessed. *Severn v. Clark*, Leon. 122.

"A recital shall not make a covenant. *Sir F. Hollis v. Sir R. Carr*, 2 Freem. 3, *dict. arguendo*.

"The introduction of a recital by *whereas*, &c. into deeds which begin *This indenture*, occasions a most gross and manifest absurdity, by opposing a full stop in the very beginning of a sentence; an absurdity, which, though gross and manifest, is nevertheless unnoticed and continued. This might be remedied, by writing *an indenture*, &c.

"The old deeds had no recitals, but they appear to be modern inventions, for the sake of increasing fees."

This is exactly in the spirit of Mr. *Ritson*; it shews acumen and research, but it concludes with a coarse satire, which many of our readers will think too harsh.

The simplicity of ancient deeds is not to be attributed to the superior ingenuity or integrity of the ancient conveyancers, but to the more simple state of society in former times. When lands were chiefly in the possession of the great barons or of the religious houses and lay or ecclesiastical corporations, and when also land was almost the only security in which money was invested, estates were permitted to descend from father to son in almost an uninterrupted channel. The rights of the heir and of the younger children were determined by the course of the law rather than by the foresight of the conveyancer; and estates were transferred from one proprietor to another by simple grants or feoffments, sometimes with secret uses to the feoffor, and the occupier of the land was either a tenant at will or a lessee for a short term of years. Now since the statute of uses and of devises the face of society is changed. Land and its raw produce

is no longer the principal wealth of the country: commerce and luxury have increased the means, the wants, and the mutual relations of almost every individual in society. The elder son no longer engrosses all the wealth of the family and is no longer considered as the prop, the support, and protector of the younger children, for whom provisions are made by complicated conveyances, in trust, under the most voluminous wills and unwieldy settlements. The spirit of trade and speculation which pervades all ranks, from the agricultural and building *Leviathan* of the house of peers to almost the lowest of his tenantry, as it has created the necessity of converting every security, as far as possible, into a trading capital, either for the purpose of commencing new commercial undertakings or to secure to creditors the payment of debts incurred on the old; add to these the effect of the bankrupt laws which render almost "*all assurance little sure*": all these have rendered the business of the conveyancer most complicated and intricate. His deeds must provide for all contingencies and embrace all kinds of property. Every thing that is capable of being converted into wealth or gain, above and below ground, is not merely to be passed from hand to hand, but is to be, more frequently, assured to the possession of one in trust for many others, by way of security to creditors or provision for families. In this view of the business of a conveyancer, his occupation is as various and complex as the business of the world we live in, and we are not to wonder that his deeds are commensurably long and intricate. And they are the more so, because it is the practice to ascertain every thing by specific covenants, instead of relying upon general warranties, or leaving the parties to seek the aid of a court of equity; and, because, at the same time that it is desirable to settle the property strictly in one respect, it is also an object to give the trustees full and specific powers of disposition over it, as actual proprietors, for the benefit of the *celles que trusts*.

We are therefore, for our own parts, far from thinking with Mr. *Ritson* that the recital in deeds was, wholly, introduced for the sake of the fees, though however they may sometimes occasion it to be lengthened too much. In many instances it is true, much recital is unnecessary; but in many others a concise recital of some of the leading facts which mark the relative situation of the parties must not only afford a more easy clue to the understanding of the whole deed and the intention of the parties, but it may also enable the conveyancer to abridge considerably the verbosity of his covenants.

With respect to the other observation, as to the grammatical



inaccuracy of the commencement of modern indentures, it has occurred to ourselves, and doubtless to many others, and we see no reason why it should not be altered. We should indeed be amongst the first to recommend the study of neatness and the total banishment of tautology from every solemn deed : but we know the utility and the sanctity of long established forms ; we know the danger of innovation ; and we know, that he who attempts it must arrogate to himself no small confidence in his own judgment. Were it not for this we should see much of the trash of the office of the special pleader the equity draughtsman, and the conveyancer banished from all our precedents. Abating this, it is only ignorance or a superficial view of life and human affairs that will raise an outcry against the length of legal proceedings ; and in this opinion we are happy to be confirmed by the authority of one whom few will question for his accuracy of judgment, and none surely for his want of candour in this instance ; we mean that of Dr. *Johnson*, who considers the length of an ordinary conveyance not so much attributable to the interested views or the ignorant and prosing habits of the conveyancer, as to the general infidelity and suspicion of all mankind in worldly concerns.

“ If we consider the present state of the world, it will be found that all confidence is lost among mankind ; that no man ventures to act where money can be endangered upon the faith of another. It is impossible to see the long scrolls in which every contract is included, with all their appendages of seals and attestation, without wondering at the depravity of those beings who must be restrained from violation of promise by such formal and public evidences, and precluded from equivocation and subterfuge by such punctilious minuteness. Among all the satires to which folly and wickedness have given occasion, none is equally severe with a bond or a settlement.”

We shall add the following extract from Mr. *Ritson's* observations :

[“ *Bearing date the day next before the day of the date of these presents.*”]

“ *A datu* includes the day, but a *die datus* excludes the day. *Hath v Ash*, 2 *Salk.* 413.”

“ Common sense and Lord Coke however tell us that “ from the date” and “ from the day of the date” mean the same thing ; and Lord Mansfield, the case of *Pugh v. the Duke of Leeds*, Cowp. has decided that in deeds it means either from the day exclusive or inclusive, as the context and the intention

of the parties shall determine, and that the distinction that from is inclusive is a subtlety unworthy the jargon of the schools. In this he has been wisely followed by Lord *Ellenborough* and the whole court of *King's Bench* in the case of the *King v. Stevens*, *Smith's Rep.* 44 *Geo. III.* 437, where the same doctrine has been extended to indictments, and this plain rule has been established, "that in all cases the language of all legal proceedings is to be construed by the context and by known usage, as all other words and writings."

We think therefore that the editor should have noticed this, we mean the case of *Pugh v. the Duke of Leeds*. But he has been very sparing of his labour; he has not even corrected the grammar of these hasty notes, in which we frequently find a change of the tenses in the same sentence, which, though very excusable in the draught of a deed, written in the hurry of business, is scarcely so in a printed book. The editor perhaps was led to this by respect for the eminent character of the author, and was afraid to change or to doubt any thing; but if so, he pays a false tribute to his memory.

The editor, in the little he has done, has shewn a taste to which we are avowed enemies. In his preface, as above he speaks of a *legi-logical* career. What new idea is conveyed by the term *legi-logics*, beyond the plain English of the study of the law, we know not; but we should be greatly surprised if any one should publish an essay on *legi-logics* as a treatise on the study of the law, and we believe few who read the advertisement would understand it. We wholly object to *neo-logical* licences; but if a novel term must be used, we recommend *nomo-logical*, as of a more regular etymology, being compounded of two Greek words, whereas the word *legi-logical* is formed by the union of a Latin and a Greek word, which constitutes a most barbarous jargon.

We had nearly lost sight of the original object of this account but we shall conclude with saying, that Mr. *Ritson's* part of it may be of service as a hint to some one for a plan of analysing and commenting upon the usual parts of a deed; which, if well executed, might be very useful. As to the whole book we may add that, as the size and price are but small and it may contain some practical hints for the attorney or the very young conveyancer, it may be useful both as a specimen of a practical common place book and also as a sort of assistant to the office. It does not profess to contain much; and we should not have dwelt upon it so long had it not afforded us an opportunity of attacking an illiberal prejudice, which we shall be happy at all times to repel.

Observations by M. C. on the Succinct View of the Law of Infancy, by R. R.

IT is not my intention to follow the Author of the Succinct View of the Law applicable to Infancy through the whole matter inserted by him in the Law Journal, but merely to confine myself to such parts of it as clash with the positions advanced by me in the Critique on Mr. Watkins's Chapter of Infancy.

I agree with the Author of the Succinct View, that the grand principle which governs all the cases that have been determined in regard to the acts of infants, is to protect their weakness and inexperience from the snares of the world, but I object to the inference which he draws from those cases, "that the deeds of minors, where there is no appearance or semblance of benefit to them, are void." This certainly is not correct, for then those deeds of infants which are not prejudicial to themselves, and are beneficial to others, would be bad; but indisputably cases of this sort do not come within the reason of the privilege given to infants, *which is to protect them from wrong*, and *cessante ratione cessat et ipsa lex*; nor is there one syllable in the cases to warrant the inference that such deeds are bad. On the contrary, there are many express decisions and *obiter* sayings in their favour. Indeed, their validity is admitted by the Author of the Succinct View himself, (with that disregard to consistency which is observable in many instances) in p. 6, where it is stated "that the transactions of an infant which do not touch his *interest*, but take effect from an authority which he is intrusted by law to execute, will bind him."

I come now to the consideration of *Zouch v. Parsons*. In the construction of this case the opinion of the author of the Succinct View is widely different from mine. He states, "the court held the deeds to be voidable only as the transaction appeared to have been for his (the infant's) benefit. The first general question considered in that case was, whether the conveyance was good and bound the infant; now as it was, the unanimous opinion of the judges that he was bound, the Author of the View, in saying that the conveyance was voidable by the infant, must mean that it was binding only during his minority, and that when he came of age, he might avoid it. I shall attack this position, and en-

deavour to shew that the opinion of the court was, that the infant was *bound for ever*. When cases have been determined on good and indisputable principles, and other cases arise, differing in circumstances from those so determined, yet if the same principles occur, they will govern the new cases to the full extent to which they were applied in the determined cases. Whether the reasons on which the cases were founded that have determined the acts of infants to be good for ever exist in the case of *Zouch v. Parsons*, it is not my present business to enquire: my object is to shew that it was the opinion of Lord *Mansfield* and the court, that these reasons did exist. "To mention a rule or two," says Lord *M.* "the reasons of which are applicable to the present case."—Why, if they were applicable to it, they will unquestionably govern it to their fullest extent. The first rule he mentions is, "if an infant does a right act which he ought to do, it shall bind him." He then enumerates several instances where the acts of infants are good and binding for ever; as, to make equal partition. Now when he comes to apply the rules laid down to the case under consideration, he observes, "by act of parliament, 7 *Anne*, the infant was compellable to do it during his minority;" and adds, "there can be no doubt the infant was compellable to do what he has done." It therefore was clearly the opinion of the court that the reasons which governed the cases of equal partition, and which were good for ever against the infant, applied to and governed the case of *Zouch v. Parsons*. The reason being, that the act of an infant which he is compellable to do will be good though it is done without compulsion, and in that case he was compellable to do what he did voluntarily, I shall confine myself to this rule; being apprehensive of taking up too much space in the Journal; other rules, however, were equally strong as that I have noticed. I will now state another reason that it was the opinion of the court that the infant was bound for ever. When a term or expression is borrowed, it must, unless qualified, be understood to be meant in the same sense as it was in the place from whence it was taken. Then in what sense had the word *bind* been used. During the minority of the infant? No, but, in every case, for ever. Besides in what sense is it used in other parts of the judgment delivered by the court: "Miserable must be the condition of minors," observes Lord *M.* "excluded from the society and commerce of the world, deprived of necessities, education, employment and many advantages, if they could do no *binding* act." Now what is

meant by the term binding? When applied to *necessaries*, &c. it cannot be denied, *that binding for ever*, was meant. In saying that the infant was bound, it must therefore have been meant, that he was bound for ever. The division of the case into the two general questions by Lord *M.* and the mode of considering them are also conclusive, that in saying the infant was bound, it was meant to be understood that he was bound for ever. If the word *bound* only meant as contended by the author of the View, *bound during the infancy*, can it be believed that Lord *M.* after having decided that the infant was bound only during the infancy, (or in other words, that he ought to have avoided, the conveyance, after he came of full age) would have proceeded thus? "But supposing it not binding against him or those who stand in his place," (or in other words, supposing it to be *ipso facto* void, or that it might be avoided during his infancy,) "the second question is, whether the *defendant* can take advantage of the infancy, and on that account object to the conveyance. This depends on two points, first, whether this conveyance be void or voidable only; second, If voidable only, whether the infant by his entry before the assizes had absolutely avoided it." What! after saying that the infant was bound, or, in other words, that it was not void nor could be avoided during his infancy, but supposing it to be void or voidable, would he have said there arises this question, Can he avoid it by entry? Now, had there been other modes by which the infant could have avoided it besides entry, this might have implied, "though he can avoid it by those other modes, yet can he do it by entry?" But as I apprehend there are not any such, it is in fact considering over again a question on which an opinion had already been given. It is saying we are of opinion that this conveyance is not voidable, but supposing it to be voidable it is voidable? I have now gone through and examined such parts of the View as appear to me to have clashed with the opinions I advanced in your last Number. At the outset it was my intention to have confined myself to this, but there are two or three passages in the View, eminently conspicuous for their absurdity and incorrectness, and, therefore, I hope I shall be excused for briefly noticing them. It is stated "that the court held the deeds to be voidable only, *as the transaction appeared to have been for his benefit*. The idea which this conveys is, that if the deeds had not appeared to have been for his benefit, they would have been absolutely void. Lord *M.* after supposing the deeds not to be binding, says, it is difficult to say what is the true ground of

deeds being void or only voidable, whether the solemnity of the instrument, or the semblance of benefit, appearing on the face of it, and the opinion of the court was, *that the solemnity of the instrument alone would have been sufficient, though there had not been any semblance of benefit.* This is evidently the effect of what was delivered on that point, and it must be obvious to every person who reads the case with the least attention. It is true, Lord *M.* says, "But be the point as to the solemnity of the instrument as it may, we are of opinion that the deeds are only voidable as there is a sufficient semblance of benefit." But this is, after stating that he thought the solemnity of the instrument alone, would have been sufficient. I take the liberty here of making an observation on Lord *M.*'s dictum, that there was a semblance of benefit. The capacity in which the infant conveyed was, as heir of the mortgagee. In that capacity he had no benefit; it was as executor and residuary legatee, that he was beneficially interested; and I take the law to be that when a person is interested in lands in more capacities than one, what he does in one of those capacities shall affect him only as he is interested in that capacity.

It is stated too that a jointure on a wife is not a contract. What is a contract but a *mutual assent*? If the wife then assents to the provision made by the husband, it is a contract; if she does not assent, she is not barred of her dower; for a person cannot be compelled to take any property by deed against his consent.

I beg you will correct an error in my last communication where it was stated an infant wife may be barred of her dower, &c. it should have been an infant may be barred of her dower, before marriage by acceptance of a jointure, &c.

M. C.

January, 1803.

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*Reply by R. R. to M. C.'s Observations on the Succinct View of the Law of Infancy.*

YOU will please to receive my thanks for the communication of the last letter received from your old correspondent under the new application of M. C. So far was I

from intending to enter into any literary argument or controversy with M. C. upon the subject of his first letter, that I even desisted from making any criticisms upon it, and merely offered to the readers of your useful and valuable Journal such observations as had been the result of my study and researches. That a fair opportunity for criticism presented itself is sufficiently manifest from the error in judgment of M. C. in referring your readers to *Ketsey's case*, \* as well as to the case of *Zouch v. Parsons*, in support of propositions which your readers will easily perceive that the decisions in them did not authorize. Accordingly, in *Ketsey's case*, the court held the lease to be voidable only at election; and the decision was that as the infant had arrived at maturity before the rent-day, he, as lessee was liable to pay the rent, upon the principle as I conceive, of his not dissenting to the lease at 21. I am therefore surprised that M. C. could collect from that case that the disadvantageous purchases of infants are void. I am, indeed, anxious to ascribe M. C.'s mistake as originating in the above source, from the inclination which I feel to believe, that the flattering desire to sit in judgment upon another's work could not induce M. C. to mistake authorities in order to give colour to his criticisms.

The labour and anxiety of M. C. in his last letter to support his allegation in the first, viz. that in *Zouch v. Parsons* "Lord Mansfield, after an excellent display of principle, resolved that the infant was bound," will clearly appear from perusing his *crudite* and *luminous* comments upon the judgments pronounced in that case. "The Succinct View of the Law of Infancy," in unfortunately differing in expression and declaring the grounds of the judgment of the court in the following words, "there the infant heir of a mortgagee in fee reconveyed the estate by lease and release; the heir still being a minor, the court held the deeds to be voidable only, as the transaction appeared to have been for his benefit," has brought down upon itself the grievous weight of M. C.'s animadversion. Although license may be given to M. C. to palliate with candour inadvertent or casual mistakes, yet that liberty cannot be granted him when he perseveres in error merely from an unwillingness to acknowledge it; especially when the mistake is rendered so easily conspicuous as by the simple reference to the case which he cites. With respect to the correctness of my conception and statement

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\* *Cro. Jac.* 120.

of the decision of *Zouch v. Parsons*, I shall only refer your readers to the report of the case by Sir James Burrows,\* and to Mr. Hargrave's notion or idea of the grounds of that judgment in his short note to page 51, b. of *Coke upon Littleton*.

M. C. objects to the proposition "that the deeds of minors where there is no appearance or semblance of benefit to them are void." But notwithstanding the objection, I have found no reason or authority to convince me that the proposition as a general one is incorrect. If an infant execute a bond with a penalty, it is void;† *contra* if the bond be single and for a proper consideration‡, and for the following reasons: in the first case the penalty appearing upon the face of the instrument, affords a legal inference sufficient to repel any presumption of a semblance of benefit to the infant from the transaction; but in the second, the consideration of the bond being sufficient and advantageous to the infant as collected from the matter of the instrument, is not considered void. Besides, your attentive readers will collect from the following extract of Lord Mansfield's judgment in *Zouch v. Parsons*, that the above proposition was impliedly admitted by his lordship in the judgment pronounced in that case." "We are all of opinion, that the 109l. received, and the other circumstances of the transaction *show* a **SEMBLANCE OF BENEFIT** sufficient to make it *voidable only* upon the *matter* of the conveyance." From whence surely a just inference arises that the court might or would have been of the contrary opinion, if *such a semblance of benefit* had not appeared upon the face of the conveyance.

The next charge is of inconsistency in stating "that the transactions of an infant, *which do not touch his interest*, but take effect from an *authority* which he is intrusted by law to execute, will bind him." It seems that M. C. in the heat of criticism has forgot that there are such things as exceptions to general rules, which are not termed inconsistencies; and this exception with many others stated in the Succinct View, proves the existence of the rule. If then, the law, in opposition to the general disability of infancy has empowered a minor to execute an *authority* delegated to him, which in *no* wise affects his *interest*, the eyes of my intellect are not sufficiently strong to perceive the inconsistency with which

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\* 3 Burr. 1794.

† Co. Lit. 172. a.

‡ Cro. Eliz. 920.



I am charged; in setting forth such an instance as an exception to a general rule.

It affords me pleasure to find that your old correspondent, after a long discussion upon the merits of the judgments in *Zouch v. Parsons*, has recreated his mind with a *legal syllogism*. A contract is a mutual assent. A. agrees to make a settlement upon B. to which B. assents, *ergo* the agreement of A. and the assent of B. amount to a contract. But suppose the case to be that A. alone is competent to contract, and B. his intended wife was not able to assent on account of infancy (and this is the true state of the question,) what then will become of the learned syllogism, or sophism, with greater propriety? One would conjecture that by losing one of its supporters, it must fall. But I leave this to your readers to determine, earnestly recommending to M. C. the perusal of *Drury v. Drury*,\* in which he will find the following passage, urged for the appellant in that case, and which, with the other arguments used, finally prevailed with the House of Lords." That no woman having a jointure settled upon her before marriage, should claim or have title to dower. So that in all cases where jointures are made, the subsequent (marriage which, at common law, gives a title of dower,) after this act, gave no such title; and the jointure is made a statutable provision for her, in lieu of the provision at common law. *It does not therefore depend upon the consent of the wife*, that the jointure takes away her right of dower; but, having the jointure, she never gains any title to dower. That the statute gives no colour for the *constructive exception of infants*. The words are generally, *every woman married having jointure made, shall not claim nor have title to any dower*, which includes *infants* as well as adults." The case last referred to is an authority that if the jointure be made before marriage according to the statute the subsequent assent of the wife then an infant is unnecessary:† but M. C. seems to think otherwise, which perhaps proceeds from a spirit of gallantry, suggesting that an act of parliament should not be construed in such a manner as to oblige a lady to accept a benefit by deed against her inclination,

Having now Mr. Editor, submitted to your readers the observations which have occurred to me from the perusal of

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\* 5 Bro. Parl. Ca. 370. Also, 4 Bro. Ch. Ca. 506, in notis.

† 27 Henry VIII. c. 10.

‡ 3 Ves. jun. 545.

the last letter of your Old Correspondent, I must openly profess that my engagements will not allow me the opportunity of noticing any other objections which he may think proper to make in consequence of this reply. I shall therefore take the liberty of recommending to your readers to examine the principles with the cases, and I flatter myself, that in most if not in all my propositions, they will find that I am supported by authority.

I am, Sir,

Your humble Servant.

*Lincoln's Inn, Jan. 14, 1805.*

R. R.

THE subject discussed in the letters of *M. C.* and *R. R.* is of such interest and importance, that we hope we shall be excused for giving to both an immediate insertion. We intend no undue preference to our friend *R. R.* by inserting his reply immediately after the observations of *M. C.* in whom we now acknowledge an old friend. We wish to lay the arguments on both sides before our readers as early as possible; and we are sorry that want of room prevents us from inserting also a very *able* comment both upon the *Critique on Mr. Watkins's Principles of Conveyancing*, and on *The Succinct View of the Law of Infancy*, in which the validity of the deeds of infants is well discussed, which we have received from our ingenious correspondent *STUDENS*; to whom we take this opportunity of returning our thanks, as well for that, as for *other* favours. In him, *M. C.* will find, *to a certain extent*, an able coadjutor. We repeat that we feel great obligations for the assistance which *Studens* has given to the miscellaneous part of our publication, and we need now scarcely add, that we shall be happy to insert his promised *essays*, whenever he has leisure to communicate them; for it is, in a great measure, by the liberal discussion of such questions as are involved in the inquiries of our three correspondents, *M. C. R. R.* and *STUDENS*, that we hope to make this part of our work particularly useful.

STUDENS on the Law of Infancy.

**D**ISSENTING in many instances, with respect to the deeds of infants, from the positions and conclusions of as well your *old correspondent*, as the writer of the *Succinct View*, I beg leave to request the insertion of the following observations and comments upon that important subject; important in the highest degree because it is a subject upon which few gentlemen, since the case of *Zouah v. Parsons*, seem to have been able to make up their minds with any satisfaction to themselves, inasmuch as the opinions advanced by Lord *Mansfield* in that case, upon the distinction between the *void* and *voidable* acts of infants, was contrary to the previously received doctrine.

The first point is, What is the true ground of distinction, between such acts of infants as are absolutely *void*, and such as are only *voidable*? The writer of the *Succinct View* says, (p. 9), that the result of all the determinations seems to establish this proposition—that “*the deeds of minors, where there is no semblance of benefit to them are void; but that those from which they may probably receive advantage, and are entered into with great solemnity, are voidable only.*” But with respect to the proposition, supposing the ideas meant to be expressed are accurate, which however it is conceived they are not, it appears to me that it is not correctly laid down in *terms*; for if the word *and*, in the latter part of the proposition, is to be taken as a copulative, then we must infer, to make an infant’s contract voidable, it must be not merely for his advantage, but must also be entered into with great solemnity, which is clearly wrong. For, suppose an agreement, manifestly for the infant’s advantage, to be under-hand only, here would be a contract *not* carried into execution with great solemnity, yet unquestionably not void, but *voidable*. On the other hand, if the word *and*, in the latter part of the proposition, is to be taken in the disjunctive, and we are to read *or*, then we must infer from the whole, that, where there is no semblance of benefit, the deed is *void*; but where it is entered into with great solemnity, it is *voidable*. Then, suppose the infant to make a *feoffment greatly to his disadvantage*, it is plain, according to the

above proposition of the writer of the *Succinct View* that such feoffment would, at one and the same time, be both absolutely *void* and *not* absolutely *void* but only *voidable*, for it would be a deed of the greatest solemnity and yet be without any semblance of benefit to the infant. This incorrectness is perhaps attributable to the writer's endeavour to bring the essence of all the cases within the terms of one general proposition, which is impracticable; for both the solemnity of the instrument and the semblance of benefit cannot each constitute a substantive rule; the one will be found to interfere with or militate against the other, in whatever terms the proposition shall be attempted to be laid down. And this confirms me in the opinion which I have formed, from a perusal of the cases *before* that of *Zouch v. Parsons*, as well as from the insufficiency of the reasons which were relied upon in that case; viz. that the *semblance of benefit* constitutes the *rule*, and the solemnity of the instrument is an *exception* to that rule; and that this exception is confined to *feoffments*, notwithstanding the *assertions* to the contrary which are to be found in the last mentioned case.

The writer observes also, that "the distinction, as taken by him in the above proposition, was admitted and confirmed in the case of *Zouch v. Parsons*;" but if he will take the trouble of looking at the case again, he will find himself in error; for the court distinctly said (3 Burr. 1804) it is not settled, *what* is the true ground upon which an infant's deed is *voidable* only, whether the solemnity of the instrument is sufficient, or it depends upon the semblance of benefit to the infant, from the matter of the deed upon the face of it. They, however, thought that the law was, as laid down by *Perkins*, viz. that the *solemnity* of the instrument was the *ground*, although they were not compelled to, nor indeed did they, hold the deed to be *voidable* upon that point alone. They took it in this manner—here is both an instrument of sufficient solemnity and a semblance of benefit, therefore, whichever be the true ground, the conveyance is not void but voidable. Ibid. 1803.

The writer further says, that, in the case of *Zouch v. Parsons*, "the distinction in *Perkins* (sect. 12) was also acknowledged to be law viz. that all grants, &c. which take effect by *delivery* of the infant's hands are voidable;

implying that deeds, &c. which delegate a *mere power*, and convey *no interest*, as letters and warrants of attorney, are void." But I ask, ought the distinction taken by *Perkins* to have been acknowledged for law, in the sense in which Lord *Mansfield* expounded the passage; and as it was cited by him, to prove that feoffments and grants, &c. were all upon the same footing? What *Perkins* means by the words 'which take effect by delivery of the infant's hands' is the *manual transmission of the substance or thing itself*, and not the *delivery of the deeds or evidence of the transaction*. It is the delivery *de manu in manum* of the thing, as of the land in case of livery of seisin, by the infant himself, that distinguishes them from grants and such instruments whereby incorporeal things pass; for grants, &c. take effect by *delivery of the deed* not of the *land*. At least this is the meaning of the authorities which *Perkins* cites, and this very passage is relied on in *Shep. Touch.* p. 232, 233, as an authority for the doctrine, that feoffments which take effect by delivery of the hand are voidable only, but that grants, &c. which take effect by delivery of the deed, are void; and the cases referred to by *Perkins* do not warrant Lord *Mansfield's* conclusion, but the conclusion which the author of the *Touchstone* put upon them. The same distinction is also taken between feoffments and grants in *Finche's Law*, lib. 2, p. 102.

The writer, however, observes, that "there is no difference between *feoffments* and other deeds which convey an interest: and, therefore, that grants, releases, &c. are only *voidable*." I shall be glad to see him substantiate this position: but the mere *dictum* of Lord *Mansfield*, will not be sufficient, when (as a thorough investigation of the subject will discover to the writer) that *dictum* is opposed by a host of judicial authority. Certainly many authorities may be quoted to shew that the deeds, grants, &c. of infants, having every requisite in point of formality, are voidable, and particularly *Whelpdale's case*, 5 Rep. 119. But the meaning of the word *voidable*, there, is merely that the infant cannot plead *non est factum*, but must avoid it by shewing the special matter, as was asserted by Ch. J. Holt, and the whole court in *Thompson v. Leach*.\* A feoffment with livery by the in-

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\* 3 Mod. 310.

fant in person is voidable only; a grant delivered by the infant is also voidable: but the distinction and substantial difference is as to the *operation* of the two. The feoffment hath an operation, and passeth the land from the infant to the feoffee, though it is liable to be avoided: the grant hath no operation at all, and every thing remains in the grantor, as before the grant; the avoidance is only necessary, because it hath the *form* of a good deed. In all the cases which have been cited [said the court in *Thompson v. Leach*, 3 Mod. 310. 1 Lord Ray. 315] where it is held that the deeds of infants are not void but voidable, the meaning is, that *non est factum* cannot be pleaded *because they have the form, though not the operation of deeds*, and therefore are not void upon that account, without shewing some special matter to make them of no efficacy. The writer of the *Succinct View*, however, says, that "the reason why an infant cannot plead *non est factum* is because the deed hath an operation from the delivery." But let us examine whether he is borne out by the authority to which he refers. In 2 Inst. 483, it is merely said, that an infant, if he seal and deliver a deed, cannot plead *non est factum*, but must avoid it by plea of infancy: but there is not a syllable to favour the opinion, that the reason why *non est factum* cannot be pleaded, is, that the deed hath an operation from the delivery. The next is *Popham*, 178, and there *Jones, J.* said it was a void contract; but, that an action upon the case did lie against the executor upon the promise. *Jones* also said, "if an infant makes a promise, it is void and he may plead *non assumpsit*, which *Doddridge* did not deny; but upon his *obligation* he cannot plead *non est factum*, for he shall be bound by his hands, but not by his mouth." Now *Jones* could not mean that the infant was absolutely bound, for it is agreed on all hands that it must be either void or voidable? and if he did not mean that he was absolutely bound, then there is nothing to favour the opinion, that it had an operation from the delivery; but the meaning of *Jones* is plainly this, that the infant cannot plead *non est factum* where the deed is under his hand, but he may plead *non assumpsit* where the contract is not under his hand, but by word of mouth.

The other reference is to what is said in the case of *Stone v. Wythipole, Cro. Eliz.* 126, 127. In the case itself the court was clearly of opinion the action did not lie,

for the contract of the infants was merely void. There was here, therefore, no operation from the delivery; but perhaps the reference is to the assertion of *Egerton*, counsel, who said it was adjudged between *Edmunds* and *Burton* that where an infant was bound in obligation, and at his full age he promised payment, an action was maintainable against his executor upon this promise, for that the bond which was the ground of it was not void but voidable, and he could not plead *non est factum* or *nil debet* to a bond. But we shall the better be able to understand what was really assented to by the court upon the subject by examining the same case in 1 *Leo*. 114, according to which it was said by *Wray*, Justice, that 'if the infant had been bound in an obligation with a surety, and afterwards, at his full age, he, in consideration thereof, promiseth to keep his surety harmless, upon that promise an action lieth, for the infant cannot plead *non est factum*, which see in the case of one *Edmunds*.' So that the promise upon which the action lay was made by the infant at his full age and the whole only goes to shew that he could not plead *non est factum*, and that it was in that sense that it was considered voidable, and not because it had an operation from the delivery.

With respect to *Moore*, pl. 132, it is not at all to the purpose; most probably an error in the reference was made by some original writer, and has been copied by others, for I find it handed down through many books. Therefore there is nothing in the cases referred to which goes to shew that the reason why *non est factum* cannot be pleaded is that the deed hath an operation from the delivery; and much less sufficient to invalidate the solemn resolution of *Holt* and the other judges in *Thompson v. Leach*, who there held that it hath no operation.

The writer also observes, that "it was determined in *Drury v. Drury*, that if a provision be settled upon an infant feme previous to marriage in bar of dower, she will be conclusively bound by it under the statute of jointures; *Lords Hardwicke* and *Mansfield*, observing that a jointure was not a contract by the wife, but a provision made by the husband, &c. as defined by *Lord Coke*, which obviated the consequences drawn from an infant's incapacity to contract." Now, sir, one remark with respect to that observation of *Lords Hardwicke* and *Mansfield*. It is true that a jointure is a provision by the husband, but then

this provision is in lieu, bar, and satisfaction of the feme's dower. Dower is a freehold which a woman will be entitled to out of the lands of her husband after his death, unless she be barred by a jointure; and yet it is said the bartering her right or title to dower for a collateral satisfaction, is not a contract.

From what the writer says upon the subject, he seems to think that the reason given by Lords *Hardwicke* and *Mansfield* was the ground of the decision in *Drury* and *Drury*; but the fact is otherwise: the case was determined upon a different ground, as every reader cannot fail to perceive upon an attentive perusal of it. That ground was, to use the words of Lord Chancellor *Thurlow*, in the case of *Durnford* against *Lane*, 1 Bro. Cha. Cas. 108. "There" (in *Drury* v. *Drury*) "it was taken up thus, marriage may be between minors—that dower attaches upon marriage, the act having said nothing as to the majority of the wife; the act spoke of her when she could make the contract."

At the end of the last Number of The Journal, I perceive that the reader is cautioned particularly to notice, that the writer of the succinct view does not assent exactly to the positions, with respect to the case of *Zouch* and *Parsons*, of the gentleman who wrote under the signature of an *Old Correspondent*; but it is certain that the caution had better have been withheld, for the view which the old correspondent has taken of that case is certainly the correct one, the ground of the decision in *Zouch* and *Parsons* being this:—"The act which the infant hath here done he was compellable to do under the statute of 7 *Ann*; then it is a rule of law that what an infant is compellable to do, shall, if done by him voluntarily, be binding: the infant therefore is, in this case, bound. This was the first question in the case, and the sole reason upon which the court held the infant bound: they did indeed afterwards go on to consider, supposing the infant not to be bound, whether his act was void or voidable only; but the judgment that *he was bound*, went upon the ground, that he might have been compelled to do the act which he had done. I cannot, however, accede to the broad observation of your *Old Correspondent* that "by the decision in *Zouch* and *Parsons*, the trouble, inconvenience, delay, and expense of an application to a court of equity are rendered unnecessary." Where it is clear the court of Chancery would upon application, compel the infant to convey, there



(according to the case of *Zouch and Parsons*) his conveyance would be good without any application: but then, before any one could in practice advise such an application to be dispensed with, he must be in possession of all circumstances as to the precise situation of the parties, and the substantial equity of the whole transaction—circumstances which a court of equity can always come at, but which may be kept back from the view of counsel. I confess that I should be very slow in taking the whole responsibility upon my own shoulders merely for the sake of saving the parties the trouble and expense of pursuing those modes which the legislature itself has thought fit should be adopted. Great deference and respect is due to the opinion of so great a character as the late Earl of *Mansfield*, but it doth seem to me that much might have been said against the infant's being bound in that case; for as infant trustees could not bind themselves at common law, and as the act of parliament which meant to remedy the inconvenience, expressly directs that a particular mode, viz. an application to the court of Chancery, should be pursued, I should have questioned whether the common law principle, that what an infant is compellable to do, shall, if done without compulsion, be binding, would have been let in by that act; and whether the act itself did not amount to an ordinance, that an infant trustee's conveyance should not be binding on him unless the line chalked out by that act be pursued, and so the common law rule is inadmissible in such cases. Your *old correspondent* cites the case of *Caruthers v. Caruthers*, 4 Bro.C.C. 500, to prove that an infant wife may be barred of her dower by the acceptance of a jointure. But it was determined that the wife in that case, and under the particular circumstances of it, was *not* barred. Want of time prevents me from following your correspondents further in this communication; but I shall probably beg permission to occupy a few pages in a future number in a further discussion of the subject; and indeed, if I thought it would be acceptable, I would have transcribed from my note book and remit for insertion in the Law Journal an examination of the reasons, relied upon by Lord *Mansfield* in the case of *Zouch and Parsons*, for thinking all the deeds of infants as well grants, &c. as feoffments, voidable only, and not void; for, having minutely examined the point, I am convinced there is not a

single reason upon which his lordship relied that is not outweighed by greater authority, and that what was generally understood to be the law *before* the case of *Zouch and Parsons*, is still law at this day.

STUDENS.

*Lincoln's Inn, 22d January, 1805.*

On transmitting the Letter of *Studens* to the Author of the *Succinct View*, he returned it with the following Answer;

I have read the paper of *Studens* with great pleasure. The author is certainly ingenious and has given the question great consideration, but it is rather unfortunate for him that in differing from the *Succinct View*, in some particulars, he has been under the necessity of encountering the opinions of Lord Mansfield.

The question how far an infant shall be bound is certainly an unsettled question, and until there be a formal decision on the subject, I am inclined to adhere to what is laid down in the *Succinct View*.

I am glad to find that the opinions I have stated in regard to infancy have caused some investigation among your correspondents.

Yours, &c.

R. R.

*CRITO on Marriage Articles and other Deeds by  
Infants, &c.*

I MUST request a small portion of your Journal for the insertion of a few observations which have occurred to my mind on perusal of the *Succinct View* of Infancy, the criticism upon it by M. C. and the reply of R. R. I have examined the *Succinct View*, and am candid in declaring, that in my judgment, the performance does the author great credit, as well from the correctness of its principles, as from the conciseness and clearness with which they are stated. The only passage that appears to afford ground for argument is that wherein the author states the inference which he drew from all the cases to be, "that

the deeds of infants where there is no appearance or semblance of benefit, are void, but that those from which they may probably receive advantage, and are entered into with great solemnity, are voidable only, subject to ratification or avoidance when the infants arrive at legal maturity."

It seems to me that this conclusion, drawn from the cases, is far from being incorrect, considered in a general point of view. Besides the instance of the bond in *R. R.*'s reply to *M. C.* the case of a settlement may be adduced. Suppose a male infant, with the advice and consent of his guardians settles his real property by deed, in contemplation of marriage, and receipt of a considerable fortune; in the case supposed we have an instrument executed with great solemnity by the infant, with a semblance of benefit to him; then (according to the above proposition of the author of the *Succinct View*) such an instrument would not be void, but voidable upon his attaining the age of twenty-one, and I believe that the authorities upon the subject will support the proposition.\* Again, suppose an infant of the age of twenty years, sold his estate to a great advantage, and on that occasion executed and delivered indentures of lease and release to the purchaser, in the latter of which instruments the consideration was expressed, surely such a deed and transaction would not be void but voidable only by the vendor upon attaining twenty-one. All this seems a natural consequence from the principle upon which the disability is founded (*viz.*) as a shield to prevent infants from being imposed upon, so that in all instances (with the exception of a few only, where the transactions have the semblance of being fair and for the benefit of the minors engaged in them,) the policy of the law has wisely left such transactions to be avoided or confirmed, when the infants arrive at maturity. With respect to what is said in the *Succinct View*, *Critique* and *Reply*, upon the subject of an infant being bound by a legal or equitable jointure, I think that *R. R.* might have stated, with advantage, upon that point, the opinion of Lord *Mansfield* in *Drury v. Drury*, as collected by Mr. *For-*

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\* 1 *Brown's Ch. Ca.* 116. *Woodeson*, 3 vol. 453, notes 4 *Brown's Ch. Ca.* 510.

Nº. 26.

rester, the note of which gentleman is given by Mr. Brown in a note to page 506, in his fourth volume of Chancery Reports; and as an extract of the opinion alluded to may be acceptable to many of your readers I shall take the liberty of copying it in this place. His lordship said "that a jointure was *not a contract* for a provision, but a *provision made by the husband* as defined by Lord Coke, and so the consequences drawn from an infant's incapacity of contracting, is ill founded. He denied that either by the law of England or any other law, every contract made by an infant is void citing the words of the *edictum perpetuum de min. tit. 4. quod cum minore gestum esse dicitur, uti quaque res eri, animadvertas*; that contracts for necessities, such as diet, education, &c. were good, and the infants body liable to be taken in execution for them; so of a sum advanced for taking an infant out of gaol. That infancy could never authorize the committing a fraud; as if goods were delivered to an infant, and he embezzled them, an action of trover would lie against him: as if he took an estate and was to pay rent for it, he should not defend himself against payment of the rent and yet hold the estate upon pretence of his infancy; and relied on a case of *Watts v. Hailswell*, and *Tresweissy*, where the infant issue in tail being 18 years old, had engrossed the mortgaged deed, and did not discover his right to the mortgagee. Lord Comper held him bound, because being of years of discretion, he had acted dishonestly, in not discovering his title; and expressed his assent to the rule, that had been laid down, of infants deserving this protection from those they contracted with; (i.e.) from the nature of the contract, if fair, or otherwise; he added, that were infants, not bound (as Lord Hardwicke had observed) by such agreements, as that [in *Drury v. Drury*] no lady could marry under age without her father or some near friend being security, that she would when of full age join in a fine to bar her dower; which if she should afterwards refuse to do, the husband must have his remedy for a collateral satisfaction against the heir of her father, or such near friend, which would make wild work; and he approved the distinction taken by Justice Wilmot between the cases where infants contract for conveying away something of their own, and where to bar themselves of a right of what is in a third person."

Temple, February 2, 1805.

CRITO.

**AN ANALYTICAL DIGESTED INDEX of the REPORTED CASES** in the several Courts of Equity, as well Chancery as Exchequer, and in the High Court of Parliament; distinctly shewing the various Points therein adjudged, from the earliest authentic period to the present Time. With a Table of the principal Titles, Divisions, and Subdivisions, and a Repertorium of the Cases, doubly and systematically arranged, upon an improved Principle. By RICHARD WHALLEY BRIDGMAN, Esq. Compiler of the *Thesaurus Juridicus*. Clarke and Sons, Portugal-street, Lincoln's Inn. 1804.

**A DIGESTED INDEX to the earlier Chancery Reports, including** *Abridgment Ca. Eq. Barnardiston, Brown's Parl. Cases, Carey, Cases in Chancery, Cases temp. Hardwicke, Comyns, Dickens, Fitzgibbon, Fortescue, Freeman, Gilbert, W. Kelynge, Modern Reports, Moseley, Reports in Chancery, Rep. temp. Finch, Salkeld, Select Ca. Ch., Shower's Ca. Parl. Strange, Tothill, Ventris, Vernon.* By GEORGE NEKEWICH, of Lincoln's Inn, Esq. Barrister at Law. Butterworth, Fleet-street. 1804.

THE voluminous extent of the Reports of Cases decided within the reign of his present majesty and the immediately precedings reigns, has given rise to a new species of digest, under the modest appellation of *indexes*, the utility of which to the practiser and the student cannot be doubted. In this labour Mr. Tomlyns the editor of the *Digested Index* to the *Term Reports*, led the way, and he has been successfully followed by Mr. Burn in his late index to the earlier modern reports of common law. Mr. Bridgman also, who had employed considerable time, in compiling an ample *Digest*, under the title of *Thesaurus Juridicus*, has been long occupied in making a *Digested Index* of the modern decisions in the courts of Equity; for the execution of which indeed he must have been well prepared by the labours previously bestowed on his larger work. By what accident we know not, whether instigated by the skilful foresight of the bookseller; whom we may be supposed to have an attentive eye to the wants of the profession, (for your bookseller is your only patron now a days); or whether by the fortuitous coincidence of pursuits, in the compilers themselves, it has happened, that while his work was preparing for the press, two other gentlemen, the anonymous

author of the Digested Index to the Reports in Chancery, reviewed in the second volume of our Journal, and also Mr. *Kekewich*, whose work we have now before us, have been, at the same time, employed upon the same subject. This is a circumstance which, wishing well in common to each of these gentlemen, we cannot but regret, as the competition cannot fail to lessen their reward, and it is a species of labour in which it can produce perhaps fewer beneficial effects than in any other.

Having announced the titles of these works, a general *Reviewer* would think that he had sufficiently explained the nature of them to his readers, but, as our *account of books* is confined wholly to works upon technical subjects, we have always allotted to each a larger portion of our work than on any other plan would be convenient. We shall therefore lay before our readers the statement which each of these gentlemen has given of his own plan, for we cannot do it more fairly or more effectually; since in every work the design of the author is mainly to be attended to, and we shall add a specimen of the execution, as taken from the body of each work itself.

#### MR. BRIDGMAN'S PREFACE.

In every state where the laws and decrees of the empire have increased to a pile so stupendous, as to threaten their own confusion or destruction by their massive weight, the first object of the legislature has been to form a design for reducing the great body of those pandects and decrees into a narrower compass and more regular system, for ordinary study and inquiry.

In the reign preceding that of the Emperor Justinian, when the edicts of the Roman empire became so burthensome, that they were computed by Eunapius to be a load for many camels, several formed a design to bring about a reductive and compressible system; and among those industrious and persevering men, we find the names of Crassus, Pompey, Cæsar, Cicero, and Sulpicius; the great work, however, was reserved for Justinian himself, under whose auspices was compiled the *Codex Justinianus*, or *Corpus Juris Civilis*, the wholesome principles of which in a great degree prevailed in Britain (in cases where the common law was silent or defective), even to the reign of our K. Edw. III. and in some instances they still prevail in matters of our civil law.

Many learned men of later times, and especially Sir Edward Coke, Sir Matthew Hale, Judge Jenkins, Sir Thomas Reeve, the

Earl of Mansfield, Sir William Blackstone, &c. &c. have earnestly and strongly recommended and promoted the adoption of every measure that can accelerate the study and reading of the English law. Various attempts, in consequence, have been made, and every report of adjudged cases, as well as every correct abridgment of the statutes, and of the reported law, has been encouraged, not only as a digest to assist the memory of the professor, but as a key to the records themselves, which may always be searched in cases of doubt or difficulty, for, *satiù est petere fontes quam sectari ritulos*.

The subject matter of our work, which comprehends the contents of more than 70 volumes of Reports (including the 7th vol. Vesey, jun. besides many common law cases) consists of certain principal heads or titles, divided into sections, and then subdivided as occasion may require. Where the title of any principal head is applicable to another sense or meaning, it is referred to in the body of the work; but where the subject is not of sufficient consequence to support a principal title in the text the reader is requested to examine the general reference (also inserted in the body of the work), which will conduct him to the object of his inquiry. Where there are any special notes, they are for the most part placed at the beginning of a section, or annexed to some leading case; but the general references will be found in their proper places, according to the system of arrangement adopted.

The system of arrangement pursued in this work is the same that was used and recommended by the learned Mr. Locke, which regards the initial letter of each title as the first object, and the vowel immediately following, as the conductor to the point in question.

We have judged it expedient to increase the text in a very small degree by noticing all the cases which have been questioned, doubted, or denied, and by adding a note of reference to those places where all the authorities upon any leading point are collected; a species of information which, we submit, no other Digested Index has conveyed to the reader.

This work will be found to contain the cases in the following Reports, including the 7th volume of Vesey, jun. viz.

*Ambler, Anstruther, Atkyns, Barnardiston, Brown's Parl. Cases, Brown's Ch. Cases, Bunbury, Carey, Cases temp. Hardwicke. Cases temp. King, C. Cases temp. Talbot, C. Cases in Chancery, Colles' Parl. Cases, Comyns's Reports, Dickens, Equity Cases abridged, Fitzgibbon, Fortescue, Forrest, Freeman, Gilbert's Chancery Reports, Gilbert's Exchequer Reports, Hardres, Keylynge, Levinz, Modern Rep. in Ch. Mosely, Nelson, Parker, Peerc Wil-*

*iams, Pollexfen, Precedents in Chancery, Reports in Chancery, Reports temp. Finch, C. Salkeld, Select Cases in Chancery, Shower's Parl. Cases, Skinner, Strange, Tothill, Ventris, Vernon, Vesey, Vesey, jun.*

Besides many Cases from the Common Law Reporters, under the titles, Devise, Estate, Legacy, Tithes, and Will, and many others as occasion has required from the Reporters before the Restoration.

And as it has been a general complaint that all Digests and Indexes hitherto published are not rendered sufficiently useful, by reason that the subject matter of them is not systematically arranged, and is not divided into a sufficient number of titles and sections; this Digest will be found to embrace 203 principal Heads, or Titles, divided into 579 Sections, with 349 Subdivisions of those Sections, 851 General References from inferior Titles and to other Cases, 8161 Placita, each placitum comprehending, in many instances, the material Cases upon any synonymous decided point, after the manner of Mr. Cox's elaborate and judicious mode of collecting authorities in his much approved edition of Peetre Williams's Reports.

#### MR. KEKEWICH'S PREFACE.

The following sheets comprehend a Digested Index of all the Early Equity Cases included in the following volumes: viz. Abridgment of Cases in Equity, Barnardiston's Reports, Brown's Parliamentary Cases, Carey, Cases in Chancery, Cases *Tempore* Lord Hardwicke, Comyns's Reports, Dickens's Reports, Fitzgibbon's Reports, Fortescue's Reports, Freeman's Reports, Gilbert's Reports in Equity, William Kelynge's Reports, Modern Reports, Moseley's Reports, Reports in Chancery, Reports *Tempore* Finch, Salkeld's Reports, Select Cases in Chancery, Shower's Cases in Parliament, Strange's Reports, Tothill, Ventris's Reports, and Vernon's Reports.

In this work is contained the whole substance of forty-eight volumes relative to matters of Equity. The Editor has adopted the same arrangement as that of the Digested Index to the later Chancery Reports, by which means those who are accustomed to the use of that Digest will derive immediate assistance from the present.

A table is given of the names of all the Cases, with references to the heads under which they are respectively classed in this Digest, and also to the Reporter, and page where the case is to be found.

As in compilations of this nature, diligence and attention are requisite rather than abilities, I trust that, young as I am at the Bar, I shall not be thought too presumptuous in offering this Book



to the Public, the result of that leisure which is in general incident to the commencement of the profession of the Law.

The following is one of the titles, or principal heads of Mr. *Bridgman's* Index :

LUNATICS AND IDEOTS

I. Distinction between them. Effects of that distinction. II. How found to be so, and herein of the commission and inquisition. III. Committee or curator, his appointment and removal (a) ; power and duty (b) ; how he shall account (c). IV. Effects of these incapacities on the civil acts of the parties. V. Jurisdiction of the court in matters of lunacy and ideocy ; and herein of traversing the inquisition.

LUNATICS AND IDEOTS I.

Distinctions between them, effects of that distinction.

1. An ideot is he who was so *ex nativitate*, and therefore finding a man an ideot for so many years was held good. Lord Wenman's case, T. 1721. 1 P. W. 702. But lunacy is a disorder occasioned either by disorders or accident, and to one of these two cases commissions were first confined ; but in time, the paternal care of the crown was extended to those where *non compos mentis*, and stopping there, that, at least, must be found to establish a commission. Lord Donnegal's case, T. 1751, 2 Ves. 401.

LUNATICS AND IDEOTS II.

How found to be so ; and herein of the commission and inquisition.

1. A person keeping a commission of lunacy by him several years without executing it, is a contempt, and the commission will be discharged with costs. Anon. T. 1740. 2 Atk. 52.

3. In an issue *non compos mentis*, particular acts of madness must be given in evidence, and not generally that the party is insane. Clarke v. Periam, T. 1742. 2 Atk. 249.

4. A commission issued to inquire of the lunacy of one beyond sea must be directed to the place where his mansion-house and great part of his estate lay ; but the common form of standing orders need not be observed in all cases. In executing the commission, the commissioners and jury have a right to inspect the person ; and costs will be decreed, if required, against the parties having the custody of the person, if he be not produced. Ex parte Southcote, T. 1751. 2 Ves. 401, 405. Commissions are various in their nature, and but of modern use, for the old practice was by writ to the escheator or sheriff, as an officer to inquire of the revenues of the crown. S. C.

5. Where there is any misbehaviour in the execution of a commission of lunacy, the coroner may quash it, and direct a new commission. Ex parte Roberts, M. 1743. 3 Atk. 6.

6. That W. B. was incapable of governing himself, and his lands, &c. is an illegal and void return to a commission of lunacy. The uniform return, except in a few instances, is *lunaticus, non compos mentis*, or *insania mentis*; or, since the proceedings have been in English, of an unsound mind. Courts of law understand what is meant by non compos or insane, as they are of a determinate signification; and *non compos* though a technical term, is now legitimated by divers statutes. *Ex parte Barnsley*, T. 1744. 3 Atk. 168 to 174.

7. On a bill by a son, as committee of his father, a lunatic, to set aside a voluntary settlement by him on defendant, the court refused defendant's motion for permission to let the house, sell the furniture, &c. and to bring the produce in court, there being danger of dilapidations: *Colman v. Croker*, T. 1790. 1 Ves. jun. 160.

8. A person found a lunatic by a competent jurisdiction abroad may be considered a lunatic here. *Ex parte Gillam*, T. 1795. 2 Ves. jun. 587.

9. It is no objection to an inquisition finding a man a lunatic, that it does not state whether he had or had not lucid intervals. *Ex parte Wragg*, *Ex parte Ferne*, T. 1800. 5 Ves. jun. 451.

10. Commissioners of lunatics have a power to summon witnesses, as incident to their office. *Ex parte Land*, E. 1802. 6 Ves. jun. 784.

Of traversing the inquisition, vide post, sect. v.

#### LUNATICS AND IDEOTS III.

Committee or curator, his appointment and removal (a). Power and duty (b). How he shall account (c).

(a) Committee, or curator, his appointment and removal.

11. The court will not grant the custody of a lunatic to one who may make a gain of it; nor will the court in such a case take the curatorship from a stranger and give it to a relation. *Lady Cope's case*, M. 1679. 2 Cha. Ca. 239.

12. The custody of a lunatic cannot be granted to a man his executors, administrators, and assigns. *Prodgers v. Phrazier*. M. 1681. 1 Vern. 9.

13. Where a father or uncle devised the custody of a lunatic above the age of 21, it is void, and the court will not grant the custody of the lunatic's person to the next heir; but the being entitled to a share of the personal estate by the statute of distribution is no objection. It is inconvenient, however, to grant the custody of a lunatic to two. *Ex parte Ludlow*, M. 1731. 2 P. W. 638; vide *Dormer's case*, 2 P. W. 264. *Neal's case*, ib. 544.

14. The custody of a lunatic's estate granted to baron and

feme, (where the feme was next of kin to the lunatic) shall determine on her death. *Ex parte Lyne*, M. 1735. Ca. temp. Talb. 143. It is no objection that the committee of a lunatic's person is next of kin to the lunatic, and will come in for a share by the statute of distributions, for it is the interest of the next of kin to prolong the lunatic's life, whereby his personal estate will be increased. *Neal's case*, T. 1729. 2 P. W. 544.

15. The committee of a lunatic petitioned the court to have his bond delivered up, and a less security given. Lord Chancellor said, that though the application was uncommon, yet upon circumstances it may be done. *Ex parte Northleigh*, T. 1755. 2 Ves. 673.

16. So, on the other hand, the security may be changed, and greater given; but such applications must not be encouraged, for if the lunatic recovers, he may be deprived of his remedy for time past, in case of a concealment. *Ex parte Pereira*, T. 1755. 2 Ves. 674.

17. The bankruptcy of the committee of a lunatic's person is a sufficient cause for removing him, on account of the fund for maintenance, but the court will not change the custody of the person, if the master finds it proper with regard to the comfort of the lunatic that it should continue. *Ex parte Mildmay*, M. 1795. 3 Ves. jun. 2.

18. The court will not appoint a master in Chancery to an office in respect of which he will be liable to account, as committee of a lunatic's estate; and the court refused to appoint a person committee of a lunatic upon the circumstances; particularly as he had agreed to give part of the profits to another. *Ex parte Fletcher*, T. 1801. 6 Ves. jun. 427.

19. The old rule, that the next of kin of a lunatic, if entitled to his estate upon his death, shall not be committee of his person, is not now adhered to. *Ex parte Cockayne*, T. 1802. 7 Ves. jun. 591. The distinction upon which, in *Neal's case*, 2 P. W. 544, and *ex parte Ludlow*, ib. 635, that rule was considered not applicable to the next of kin, from their interest in the probable increase of the personal estate during the life of the lunatic is not satisfactory. To those upon whom the suspicion (which was the foundation of that rule) could attach, immediate gain is a stronger temptation than the hope of future advantage subject to disappointment, not only from the casualties of life, but also where the state of the lunatic admits it, by the liberal application of his income for maintenance.

(b) Power and duty.

20. A committee cannot make leases or encumber the lunatic's estate without leave of the court; and therefore, where a lunatic, when sane, had made a mortgage for 50*l.* and the committee had

afterwards taken up a large sum on the same estate, the mortgage was ordered to stand as a security for the first 50l. only. *Foster v. Merchant*, M. 1684. 1 Vern. 263.

21. The committee of a lunatic invested part of his personal estate in freehold lands. This shall be taken as personal estate, and go to his next of kin, and not to his heir. *Awdley v. Awdley*, M. 1690. 2 Vern. 192.

22. Marriage with a lunatic under the care of the committee of the court is a contempt, for which the person marrying may be committed, and the marriage is no supersedeas of the commitment, so as to take him or her out of the custody of the committee. *Ashe's case*, T. 1702. Pre. in Ch. 203.

23. It is a rule never to change the property of a lunatic, nor to alter the succession of it. But where a debt is due to a lunatic in Scotland, the court will give the committee leave to sue in Scotland in the lunatic's name, and will direct the lunatic to execute a proxy (to save forms) which the committee shall attest. *Ex parte Lady Annandale*, M. 1749. Amb 81.

24. The committee having a lien on the lunatic's estate, recovered by him, the solicitor employed in the business was held to stand in the place of the committee, and to have a lien for his bill. *Barnsley v. Powell*, T. 1750. Amb. 103.

25. The court in this case appointed the brother of a lunatic as committee of his person and estate, but with restrictions not to receive any part of the estate; and a receiver being appointed maintenance money only was allowed to the brother. *Ex parte Billinghamurst*, T. 1750. Amb. 104.

26. An agreement by the committee, that coal under the lunatic's estate should be worked by the owner of the adjoining land, was established where the heir had no interest, but the next of kin had. *Ex parte Tabbert*, T. 1801. 6 Ves. jun. 428.

(c) How he shall account,

27. A committee shall not be allowed for buildings and improvements on the lunatic's estate, but where the committee has maintained the lunatic's son, the master shall consider of a proper allowance. *Foster v. Merchant*, M. 1684. 1 Vern. 263.

28. Where the court had allowed the profits of the lunatic's estate to the committee for the maintenance of his person, and upon the lunatic's death, his administrator brought a bill for an account of such profits, the committee pleaded the order of allowance, and his plea was ordered to stand for an answer; but the court declared they would not relieve in such a case without gross fraud. *Sheldon v. Alland*, E. 1731. 3 P. W. 104.

29. A committee of a lunatic's real estate may cut down time

ber for repairs. *Ex parte* Ludlow, T. 1742. 2 Atk. 407. Vide *ex parte* Bromfield, 3 Bro. Ch. Ca. 510. And the court have allowed part of a lunatic's personal estate to be laid out in repairs, and even upon improvements of his real estate. *Sergison v. Sealey*, M. 1742. 2 Atk. 414.

30. Lord Chancellor would not allow the committee of a lunatic any thing for his trouble, for fear of the precedent; but as his office, in this case, had been peculiarly troublesome, the court increased the allowance for maintenance. *In re Annosley* T. 1749. Amb. 78.

31. The committee of a lunatic's estate shall not be permitted to pass his accounts without inquiry what money was in his hands from time to time, and the master must state any particular circumstances. *Ex parte Catton*, T. 1790. 1 Ves. jun. 156.

32. The interest of a fund in court belonging to the husband, who was in a state of imbecility, was ordered to be paid to the wife for the maintenance of the family. *Bird v. Lefevre*, M. 1792. 4 Bro. Ch. Ca. 100.

33. In an account directed against the husband's estate of the wife's separate property received by him, consideration is taken of his extra expence, she being a lunatic. *Attorney general v. Parthor*, T. 1793. 4 Bro Ch. Ca. 409.

34. The court cannot, on petition, order part of a lunatic's estate to be sold for payment of his debts to prevent a bill by the creditors. *Ex parte Smith*, T. 1800. 5 Ves. jun. 556.

35. Where there are sufficient funds, a liberal application of the property of a lunatic ought to be made, in order to afford him every comfort his situation will admit. *Ex parte Baker*, E. 1801. 6 Ves. jun. 8. Vide *ex parte Chumley*, 1 Ves. jun. 296.

#### LUNATICS AND IDEOTS IV.

Effects of their incapacities on the civil acts of the parties.

36. H. was found a lunatic by inquisition with a retrospect of seventeen years. It was also found that he had assigned a debt due to him for the purchase of a manor; on a bill by the attorney general, it was held that the lunatic ought to be relieved, but that he need not be made a party, though the defendant should have leave to traverse the inquisition. *Attorney General v. Parlehurst*, M. 1668. 1 Ch. Ca. 113. Et vide S. C. 1 Ch. Ca. 133, where it was held necessary that the lunatic should be made a party; *sed secus* of an ideot, for he shall not be admitted to stultify himself.

37. A. tenant for life being *non compos*, with remainder to his first son in tail, remainder to B. in fee, surrendered by deed to B. before he had a son. Held, that this surrender was absolutely

void, and the contingent remainder not destroyed. *Thompson v. Leach*, M. 1697. 3 Salk. 427. 1 Lord Raymond, 313. Com. Rep. 45. Show. P. C. 150. Et vide *White v. Small*, 2 Ch. Ca. 103. *Portington v. Eglinton*, 2 Vern. 189, where a conveyance made by a person of weak understanding, though no lunatic, was set aside.

38. A. obtained a purchase at a great under value, by deeds, fines, and recoveries, from a lunatic, which was set aside, on application, by the committee. *Addison v. Dawson*, H. 1711. 2 Ven. 678. So shall settlement made by a lunatic be set aside, though not unreasonable. *Clerk v. Clerk*, H. 1700, 2 Vern. 414. Et vide *Anon.* E. 1683. 1 Vern. 155, where the court directed that a settlement made by one who was found a lunatic, and was afterwards restored to his understanding, should be made by a fine in C. B. so that the judges might examine him. Et vide etiam *Sackville v. Ayleworth*, M. 1682. 1 Vern. 105, where a will made by one who afterwards became *non compos*, was held not revoked by his being found a lunatic afterwards, and that a bill will not lie to examine the witnesses to it in *perpetuum rei memoriam*.

39. A lunatic is never to be looked upon as irrecoverable, his comfort therefore is to be regarded where no creditor complains, not the heaping up riches for his administrator or next of kin. *Dormer's case*, M. 1724. 2 P. W. 265. See more of this case, 3 P. W. 104.

40. The rule that a man shall not be admitted to stultify himself is to be understood of acts done by a lunatic to the prejudice of others, and that he should not be admitted to excuse himself on pretence of lunacy, but not as to acts done by him to the prejudice of himself. *Ridler v. Ridler*, M. 1729. 1 Eq. Ab. 279. pl. 5.

41. A mortgage on a lunatic's estate may be paid off with his money, and then the mortgage term shall be assigned in trust, to attend the inheritance, and held not to go to his next of kin. *Ex parte Grimston*, E. 1772. Amb. 606.

42. A trustee, found a lunatic by the master's report, cannot be ordered to convey under the stat. 4 Geo. II. c. 10, unless a commission of lunacy has issued. *Ex parte Gillam*, T. 1795. 2 Ves. jun. 587. But where a commission has issued, the court will order the lunatic and his curator to join in such a conveyance. *Ex parte Lady Annendale*, Amb. 80. So where the heir of a mortgagee was found a lunatic by the senate of Ham-burgh, he was directed to convey to the mortgagor, under the statute. *Ex parte Otto Lewis*, 1 Ves. 298.

43. A lunatic trustee refused to transfer stock, and it appeared that his refusal was occasioned by an imbecility of mind.

The court ordered the stock to be transferred under 50 Geo. III. c. 90, though no commission of lunacy had issued. *Stums v. Naylor*, M. 1798. 4 Ves. jun. 360.

LUNATICS AND IDEOTS, V.

Jurisdiction of the court in matters of Lunacy and Ideocy; and herein of traversing the Inquisition.

44. The court refused a motion that a lunatic who had recovered his senses, might be examined and make a settlement of his estate, but directed an issue to be taken upon it in *C. B. Anon. E. 1683. 1 Vern. 155.*

45. An Irish peeress was committed in this case for not producing her husband, who was a lunatic. *Wenman's case*, T. 1721. 1 P. W. 701.

46. An appeal lies from the Lord Chancellor's decree touching lunatics and ideots to the King in council only. *Ex parte Pitt*, H. 1726. 3 P. W. 108. (n). and not to the Lords, against an order awarding a commission of lunacy or ideocy by the great seal, nor against any proceedings touching the awarding or refusing such commission. *Rochfort v. E. of Ely*, H. 1768. 6 Bro. P. C. 329.

47. No appeal lies from an order of Ld. Ch. touching lunatics to the House of Lords, but only to the King in council. *Sheldon v. Aland*, E. 1731. 3 P. W. 107. Vide *ex parte Pitt*, 3 P. W. 108. (n). *Rochfort v. E. of Ely*, 6 Bro. P. C. 3129.

48. In cases of insanity, the rules of judging are the same at law and in equity. *Bennet v. Wade*, T. 1741. 2 Atk. 327.

49. An inquisition of lunacy is always admitted to be read, but it is not conclusive evidence, for it may be traversed. *Serguson v. Sealey*, M. 1742, 2 Atk. 412.

50. Where, before an inquisition of lunacy, a person who was found a lunatic has made a purchase, with the approbation of his only son, the court will not change the disposition that has been made of the money, but purchase shall stand. *S. C. Vide Ridler v. Ridler*, 1 Eq. Ab. 279.

51. After the abolition of the court of wards, the jurisdiction over lunatics and ideots reverted to the court of Chancery, to whom it originally belonged. *Corporation of Bedford v. Lenthall*, T. 1743. 2 Atk. 533.

52. A lunatic was allowed to traverse the inquisition, from the appearance he made upon a second inspection, and the grant of the custody was suspended till further order. *Ex parte Roberts*, M. 1740. 3 Atk. 7.

53. Not only the lunatic but his heir is bound upon the traverse of the inquisition. So where the alienee and the lunatic traverse, if he is found a lunatic at the time of the alienation, the

alienee is bound. *Ex parte Roberts*, 3 Atk. 308. *Ex parte Grimstone*, Amb. 706.

54. Where an inquisition found a person a lunatic, and it appeared a hard case, the court gave leave to traverse it. *Ex parte Barnsley*, M. 1744. 3 Atk. 184.

55. Where the lunacy of a person is in question, the court will make a provisional order as to his effects till the point of lunacy is determined. *In re Hele* (a lunatic), E. 1748. 3 Atk. 635.

56. In this case Ld. Ch. stopped a lunatic from being carried into Scotland, though no commission had issued. *Lady Marr's case*, cited in *Lady Annendale's case*, M. 1749. Amb. 82.

57. Ld. Ch. can make an order in a lunatic's affairs after his death. *Ex parte Grimstone*, E. 1772. Amb. 706. So where there is a reference to a master, in a case of lunacy, he shall make his report, though the lunatic be dead. *Ex parte Armstrong*, E. 1791. 3 Bro. Ch. Ca. 238.

58. On a petition for a reference to the master as to the state of the plaintiff and her fortune, and directions for her maintenance, the property being too small to bear the expence of a commission, an order was made on affidavit without a reference for payment of dividends for the two ensuing quarters. *Eyre v. Wake*, T. 1799. 4 Ves. jun. 795.

59. A traverse to an inquisition finding a person a lunatic, is *de jure*, and not a matter of favour, (*Vide* 2 Ed. VI. c. 8. s. 6.) though the chancellor is not dissatisfied with the return upon the evidence; the order for a new commission was therefore suspended for the purpose of taking the traverse. Upon the return of the traverse, finding that the party was a lunatic at the time of her marriage and at the taking of the inquisition, though not so at the time of the verdict, the commission was superseded; yet Ld. Ch. doubted the propriety of such a double issue; and as to costs, they cannot be allowed to the party taking out a commission which is traversed with success, however meritorious the case, for the property never coming to the crown, there is no fund. *Ex parte Wragg*; *Ex parte Ferne*, T. 1800. 5 Ves. jun. 450, 832.

60. The manner of pleading a traverse is very short, merely to state the inquisition, take the common traverse upon it, and the attorney joins issue. *Ex parte Wragg*, 5 Ves. jun. 452.

61. Access to a lunatic, in this case, was denied to a person entitled upon her death, in default of appointment by her, though only with a view to see whether she was in a state to exercise that power. *Ex parte Lyttleton*, E. 1801. 6 Ves. jun. 7.

62. All fair and provident applications to impeach a commission of lunacy are not discouraged; but where, as in this instance, a petition is presented by a stranger, without any interest,



for leave to traverse an inquisition of lunacy, it shall be dismissed with costs. *Ex parte Ward*, M. 1801. 6 Ves. jun. 579. As to the right to traverse an inquisition of lunacy, under stat. 2 Ed. VI. c. 8. s. 10, vide *ex parte Wragg*, 5 Ves. jun. 450. *Ex parte Ferne*, ib. 832.

63. A person, having an interest under a contract with the lunatic, was permitted to traverse, and Ld. Ch. inclined to quash the inquisition, where the commission was not executed near the place of abode, and where an order that the lunatic should have due notice was disobeyed. *Ex parte Hall*, T. 1800. 7 Ves. jun. 261.

The following is the corresponding title in Mr. *Keke-wich's Index*.

#### IDEOTS AND LUNATICS.

1. A bargain by a lunatic eight years before the lunacy found, avoided by being found a lunatic, with a retrospect of seventeen years, yet the party admitted to traverse the inquisition. *Note*, that generally a lunatic ought to be made a party; but the reason why it was overruled was, that he might stultify himself. *Attorney General v. Parkhurst*, Mich. 20 Car. 2.—1 Ca. in Ch. 112.

2. Custody of an idiot to one, and his executors during his idiotcy. *Progress v. Fraser*, Mich. 33 Car. 2.—2 Ca. in Ch. 70. 1 Vern. 9, 137. S. C.

3. The guardianship of lunatics no question of right, but of prudence, and not to be committed to any that will make gain of it. *Lady Cope's Case*, Mich. 29 Car 2.—2 Ca. in Ch. 239.

4. When to be relieved against their own acts. *Ridler v. Ridler*, Mich.—1729. 1 Eq. Ca. Abr. 279.

5. A bill will not lie to perpetuate the testimony of witnesses to a lunatic's will in his life-time, made before his lunacy. *Sack-vill v. Ayleworth*, Mich.—1682. 1 Vern. 105.

6 Motion that a lunatic who had recovered his understanding, might be inspected, and make a settlement of his estate. *Anon.* East. 1683.—1 Vern. 145.

7. Committee of a lunatic cannot make leases, nor incumber the lunatic's estate, without leave of the Court. *Forster v. Merchant*, Mich. 1684.—1 Vern. 262.

8. Mortgage made by a lunatic when sane, for 50l. and more money taken up upon it by the committee, ordered to stand a security only for the first 50l. Committee not to be allowed for buildings and improvements on the lunatic's estate.—*ibid.*

9. Master to see what was fit to be allowed for maintenance of the lunatic's son.—*ibid.*

10. A settlement is made by a lunatic; though reasonable, and for the convenience of the family, it ought to be set aside in equity. *Clerk v. Clerk*, Hil. 1700.—2 Vern. 412.

11. Sales at great under value from one that was afterwards a lu-

natic set aside; but the conveyances to stand a security for what was really paid. *Addison v. Dawson*, Hil. 1711.—2 Vern. 678.

12. One found an idiot, had leave to traverse the inquisition at her own request, on condition she would appear in person on the trial. *Anon. Mich. 1728.*—Mosel. Rep. 71.

13. The lunatic being recovered and examined in Court, the commission was superseded, and the recognizance of the committee ordered to be vacated, the lunatic declaring they had given him a fair account. *Ex parte Brumpton*, Mich. 1728.—Mosel. Rep. 78.

14. A lunatic having recovered his understanding, petitioned for a supersedeas of the commission, but the Court only suspended it for some months, to see if he was perfectly recovered, because he had often relapsed, and was found by the inquisition, a lunatic with lucid intervals. *Ex parte Ferrars*, Trin. 1730.—Mosel. Rep. 332.

15. Information against a person for contriving to marry a woman to an idiot. *Smart v. Taylor*, Mich. 11. G. 1.—9 Mod. 98.

16. Where a trustee may continue a person as a lunatic, under the custody of another. *Brown v. How*, Hil. 1740.—Barnard Rep. 354.

17. The committee of the estate of a lunatic, appointed his guardian to answer and defend the suit. *Westcombe v. Westcombe*, May 1753.—1 Dick. Rep. 238.

18. A. born deaf and dumb, on her coming of age, applies to be put in possession of her property, which on her giving sensible answers to questions in writing, was ordered. *Dickenson v. Blisset*, Dec. 1754.—1 Dick. Rep. 268.

19. The defendant becoming impaired in his mind after the decree, had a guardian appointed him, by whom he might produce books, &c. *Gason v. Garnier*, July 1756.—1 Dick. Rep. 286.

20. Defendant, a lunatic, stating that his committee was a plaintiff, reference to the master, to appoint defendant a guardian *ad litem*. *Snell v. Hyat*, Hil. 1756.—1 Dick. Rep. 287.

21. Information, at the relation of a lunatic, not proper; he must be a party. *Attorney General v. Tyler*, April 1765.—1 Dick. Rep. 378.

22. One of the defendants being a lunatic, and the committee of his estate being also a lunatic, application should be made to the great seal to appoint a new committee of the estate. *Lloyd v. —*, March, 1772.—1 Dick. Rep. 460.

23. The great seal hath the care of lunatics under a special appointment, and acts as a commissioner. *Wigg v. Tiler*, May 1779.—2 Dick. Rep. 552.

24. Where a party has been found a lunatic under a commission of inquiry, this court will not interfere. *Murray v. Frank*, 1779.—2 Dick. Rep. 555.

25. Reference to a master, to see what was proper to be allowed for the maintenance of a person of insane mind, no commission of lunacy having been issued; ordered after consideration. *Marchin v. Salkeld*, June 1784.—2 Dick. Rep. 634.

26. Bill will lie by the attorney general on behalf of a lunatic against her committees, for an account of, and to secure the lunatic's property. *Attorney General v. Panther*, July, 1791.—2 Dick. Rep. 748.

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We hope the extract of the above articles will not be thought like the whimsical joke of the ancient pedant, who produced a brick as a specimen of his house. Besides displaying in some sort to our readers the skill of the authors, we had a further view in selecting these articles: We are in possession of an *ancient reading* of great authority, from which it is our intention shortly to make a brief extract on the same subject, by way of specimen, for peculiar reasons will prevent us from inserting the whole; and thus we shall be enabled to afford our readers a complete view of the ancient law and the modern application of it upon a curious and important subject.

In his address, Mr. *Bridgman* has laid great stress upon the advantage which he has gained by adopting Mr. *Locke's* method in the arrangement of his titles. On this subject we differ from him wholly. We see no reason for changing the common and natural order of an alphabetical arrangement; and we are persuaded that had *Locke* made a *Dictionary* or an *Index*, he would have pursued it. That which for one purpose is convenient may not be so for another; and if a number of divisions is wanted, the method of *Locke*, which only multiplies 24 by 5, does not give so many, as the usual method of alphabetical arrangement, in which the number of heads or divisions are produced by multiplying the whole alphabet, with the exception of such consonants as cannot come in succession, into itself. This new method, therefore, does not facilitate research; but, on the contrary, it rather embarrasses the reader, by compelling him to reflect while he spells the word nearly through, in order to find the second vowel; and as this is a new habit to be acquired by the reader, we think he ought not to be put to the trouble of it, unless it is really productive of some consideration. 26.

able and manifest advantages. To some, this observation may appear of little importance, and we own that it does not detract from the merit of the book, but we wish to counteract the evil, as far as it goes, of leading the public astray by the influence of a great name. The true secret of making an index useful is to multiply the heads and titles, and to arrange the articles with reference to analogy, and this Mr. *Bridgman* has done successfully.

With respect to the comparative view which this specimen affords of the merits of the two works before us, it will be perceived that Mr. *Bridgman's* work is really *digested* with great skill; but, though we have not intentionally chosen an unfavourable article, for the purpose of comparison, from Mr. *Kekewich's index*, and we believe it is as fair a specimen as a short extract can be of the nature of his work, yet it is hardly so, when placed by the side of Mr. *Bridgman's*, for the latter professedly contains the reports of a longer period, and thus to put the one by the side of the other is only to compare an imperfect part with a complete *whole*. And although we prefer Mr. *Bridgman's Digested Index*, altogether, to both the other indexes, yet those who have been induced to purchase the Index to the modern *Chancery Cases* may find Mr. *Kekewich's* work a very convenient companion. To Mr. *Kekewich* we can only add that, but for the *Digested Index* of Mr. *Bridgman* we might have been satisfied with his; and that though our judgment will not give him rank before his competitor, in that *humble* labour to which, as a *pioneer* of literature he has been condemned, in the state of provocation which he significantly calls "*that leisure which is incident to the commencement of the profession of the law*;" a state of torpor or of listlessness, from which, as *South* strongly said, upon another occasion, "many a man would fly to the *galleys* for employment," and from which we wish him a speedy deliverance, yet we shall not have the less expectations of him, if upon any future occasion, he should really be *presumptuous* enough to work *above ground*, and attempt some more arduous undertaking fitter for the display of his abilities.

TO THE EDITOR OF THE LAW JOURNAL.

SIR,

IF I mistake not the object of your valuable *Law Miscellany*, you will insert the following remarks on a subject, about which many eminent conveyancers, of the past and present day, have been divided in opinion; namely, *the best method of preventing dower*. I have collected the opinions of some gentlemen of extensive practice, and without reserve given my own; and by inserting the following in the *LAW JOURNAL*, you may, perhaps, induce some of your correspondents to offer observations that may throw more light on a subject that is certainly still involved in *obscurity*; and thereby render considerable service to the *professional world*.

I am, Sir, your constant reader,  
February 21. 1805, A.

*Remarks on the best Method of preventing Dower.*

Mr. Powell's method of preventing dower was (according to a form lately put into my hands as settled by him) by making the *habendum* to a trustee, his heirs and assigns, to the uses after mentioned, viz. to the use of such person, &c. as the purchaser, by deed or will, should appoint, and subject to such appointment, to the use of the purchaser, his heirs and assigns, for ever.

This form, besides the common objection, that the purchaser cannot sell or mortgage without the concurrence of his trustee, is in my mind open to a more serious one; for there being no intervening limitation between the power of appointment and the use of the fee, the husband is seised of the fee immediately, subject to his power of appointment, and it is questionable whether the exercise of the power of appointment will defeat the wife's title of dower.

Mr. B—r's method, about the same time was "*habendum* to the purchaser and his trustee jointly, and the heirs and assigns of the trustee, for ever, in trust as to the estate and intent of the trustee and his heirs, to the intent that the same should be disposed of in such manner as the purchaser should by deed or will appoint; and, subject to

such appointment, *in trust* for the purchaser, his heirs and assigns."

As to the efficacy of the before mentioned forms of limitation, it should be observed that Mr. *Halliday* has asserted that, "where an estate of freehold is limited, *to the use of such person, &c. as A. B. shall appoint and for want of, &c. to the use of the said A. B. in fee*, the power of appointment is nugatory and void, in regard, that a limitation in fee comprehends every power of appointment whatever.

Mr. *Fearne*, however, in an opinion which he has given on a similar method of limitation, controverts the above assertion of Mr. *Halliday*, and adds a copy of an opinion which he, Mr. *Fearne*, had before given on the same subject, with which he says Mr. *B—r* coincided.

In the last mentioned opinion, Mr. *Fearne* says, "Whether there is or is not a preceding estate for life limited in use to the husband, and whether after limitation of the use to such person, &c. as he shall appoint, the subsequent limitation of the fee in use to him be accompanied with the words "in the mean time and subject thereto," *the fee equally vests in him subject to his power of appointment and until the same be executed.* "This point," says he, "was clearly determined, in the first resolution in Sir *Edward Coke's* case, 6 Co. Rep. 18, and in *Leonard Lorie's* case, 10 Co. Rep. 78," where it was resolved, that the use of the fee in the mean time vested in *Lorie*, though the estate was limited to him, in the first instance, only for life, and that, even without impeachment of waste. *Vide* 10 Co. Rep. 8, 56. The reservation of a power of appointment of a use is not rendered void by a subsequent limitation of the fee to the same person. It is a mistake to suppose that a limitation of the fee comprehends every power of appointment; for, a person seized in fee cannot, by a mere instrument in writing, pass that fee to or make it vest in another, but a proper form and mode of conveyance is requisite to pass the estate; whereas, under a power limiting the use, a person may, *by such instrument only, vest the fee in another,\** without any of the usual

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\* He may vest the *use of the fee*, but not the *legal fee*, that being in his trustee, who cannot be divested of it, but by his own act.

ceremonies requisite to a conveyance of lands. The reason is, that, in the one case, the person can only dispose of the land as owner, in the other he acts instrumentally only, according to his power or authority, and his appointee does not come in as under him or deriving the estate from him, but under a title paramount, namely, under that conveyance by which the power of appointment was reserved: just in the same manner (as to the point now under consideration) as if the use had been declared to such appointee, in such conveyance itself, instead of awaiting the interposition of the appointment by the person to whom such power was reserved. This is the doctrine upon which the great question in the case of *Sir Edward Cleere*, above cited, was decided, and which has been since confirmed and established by a variety of authorities; and this is the true reason, that an appointment, under such power as that in the present case, *prevents the wife's dower*; because the appointee, under the execution of such power, does not derive his title from the husband or from or out of the estate that he was seised of at the time of the appointment, but comes in directly under the uses of the original conveyance, by which such power was reserved, and the uses to be declared by such appointment, being in order prior to the use of the fee reserved to the husband, such uses, when declared, take place out of the estate of the husband, by relation from the time of the said *conveyance to uses*, just as it would have done, if originally declared in the said conveyance from which it takes effect."

The following form of limitation was drawn by Mr. *Fearne*, to prevent the wife's dower, and yet to leave the legal estate in the purchaser, thereby rendering the concurrence of his trustee in a sale or mortgage of the premises unnecessary. "*Habendum* to the purchaser, his heirs and assigns, to the uses, &c. after mentioned; viz. to the use of such persons, &c. as the purchaser shall by deed or will appoint, and in default of and subject to such appointment to the use and behoof of the purchaser and his assigns for life: And, from and after the determination of that estate by any means in his lifetime, to the use of the trustee and his heirs, during the natural life of the purchaser, in trust nevertheless to and for the sole use and benefit of the purchaser and his assigns, and to permit him and them to receive the rents,

&c. of the said premises accordingly, during the natural life of the purchaser: And, from and after the determination of the estate so limited in use to the said trustee and his heirs for the natural life of the said purchaser as aforesaid, to the use and behoof of the said purchaser, his heirs and assigns for ever."

Mr. *Fearne* observes, in the opinion above quoted, that whether there is or is not a preceding estate for life limited in use to the husband, and, whether, after limitation of the use *to such person, &c. as he shall appoint*, the subsequent limitation of the fee in use to him be accompanied with the words "in the mean time and subject thereunto," *the fee equally vests in him subject to his power of appointment.*

I cannot see that this is the case *where* there is an intervening limitation for life. The full power to dispose of the fee is indeed vested in him, but, in default of such disposition or appointment, the fee is put in remainder; it is in a manner entailed or settled upon his heirs: for though the use of the fee is reserved to *him*, his heirs and assigns, yet as it is not so reserved till after the determining of the estate so limited in use to the trustee and his heirs, during the life of the purchaser, that is not till he is dead; it is, in fact, a reservation of the fee, or of the ultimate remainder, to the heirs only of the purchaser. A similar view of the subject, I conceive, has latterly induced *B—r*, in his form of limitation to prevent dower, to make the ultimate remainder "to the use of the heirs and assigns of the purchaser for ever." The husband cannot, in my mind be fairly said to be *actually* possessed of more than a *life estate*;<sup>\*</sup> or, in other words, the limitation to him for his life gives him only the present right to the possession and to the rents, &c. (though I grant he has the complete and absolute fee at his disposal)<sup>†</sup> at the same time

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<sup>\*</sup> Mr. *Watkins* also seems to be of this opinion; see his *Principles of Conveyancing*, book 1, chap. 6.

<sup>†</sup> His estate is similar to an estate of *fee-tail in possession*, as in the latter he can cut off the entail by suffering a recovery, so in the former he can exclude his heir by executing an appointment. If indeed he be *actually* tenant in fee-tail in possession (a widow being dowerable out of such an estate), his wife of course would not be barred of dower unless the deed expressly says she shall be, for which reason it is safer to insert those words in the limitation.



he has all the advantages which he could have, if the estate was granted to him in fee in the first place; especially, if the words *without any impeachment of or for any manner of waste*, are introduced in the limitation of the estate to him for life; and even greater, because his wife's dower does not attach, and because he can dispose of all his estate and interest in the premises by a simple instrument of appointment, and likewise, because in case of forfeiture he does not lose the benefit of his life estate.

It has been asked "if a purchaser should die without making an appointment, as the fee would then vest in his heir at law, would not the widow be entitled to her dower?" But I apprehend Mr. *Fearne's* answer relative to the appointee, (see the above opinion,) applies with greater force to the heir at law, namely, that, "he does not derive his title from the husband or from or out of the estate that he was seised of, at the time of his decease," "but comes indirectly under the uses of the original conveyance." The appointee, (says Mr. *Fearne*,) does so, as much as if he had been named in such original conveyance. How much stronger does this apply to the heir? For he is *virtually named*, inasmuch as the original conveyance declares, that, if the husband makes no appointment the heir *shall* have the fee. If it did so declare I think his heir at law could not claim it, but, that it would revert (for want of that limitation of the ultimate remainder) to the heir of the settler or vendor, that is, in case the purchaser had not disposed thereof by deed or will. This perhaps, is a novel opinion, but, it should always be recollected, that as antiquity cannot privilege a *mistake*, neither can novelty prejudice *truth*.

It should be kept in mind, that the conveyance under consideration is a *conveyance to uses*, and not a *conveyance in fee in the first instance*, and will operate the same in respect to the appointee and heir at law, as if it was a settlement made merely for a good consideration (natural love and affection,) or, for a nominal consideration, and the estate was thereby settled upon C. D. (the purchaser) and the appointee by name, or upon C. D. and the heir by name; as in the latter case, the widow of either party would not be dowable, neither I conceive can she in the former. In both cases the *legal fee* is in a trustee, and in the former case it is declared to be so vested in

him for the express purpose of preventing the wife from being entitled to her dower.

*Fearne*, in his form of limitation above inserted, and also *B—r*, in the method latterly adopted by him, make the *habendum* to the purchaser only, and do not give the legal estate to the trustee, but in the event of the determination of the purchaser's life-estate, *in his life-time*, which, by the bye, cannot happen where the words *without impeachment* are introduced in the limitation of his life-estate, unless in cases of forfeiture to the crown, and I see no reason why a man may not be *his own trustee*, if I may be allowed that phrase. The settler, for in that light I consider the vendor, where he merely executes a conveyance to uses, says I shall hold the estate in trust to convey to whom I please, or to enjoy the same for my life, and suffer it to descend to my heirs, but, it shall not be subject to my wife's dower; and cannot the same power that gives it to me, by parity of reasoning, exclude my wife from a participation thereof. I hold the estate, it is true, but I hold it in trust for myself, my appointees, and heirs, and it cannot be held upon any other terms, till I execute an appointment; therefore, I have (as far as it regards the *legal fee*), only a trust estate, and my wife cannot claim dower out of it, for a court of equity has never suffered a widow to claim her dower out of a *trust estate*. Numerous are the methods of limitation to prevent a wife's dower attaching. Mr *Watkins*, in his work before quoted, mentions several, and I have, in my possession many more besides those above mentioned, which I believe have never been printed. But the best way (says Mr. *Watkins*) is to limit the estate, *to such uses as the husband shall appoint*, which gives him the power over the whole fee so that he may pass it to a purchaser, without any fine or concurrence of the wife or others, and the purchaser on the execution of the power "shall be in from the original conveyance, and so paramount the claims of the wife" and in default of execution to the husband for life, with remainder to A. B. his executors and administrators, during the life of the husband, which will put the limitation over in tail

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\* Those are also Mr. *Fearne's* words, in his opinion above stated.

or fee in remainder ; and, by limiting the estate to the *executors and administrators* of A. B. it will be more likely to prevent the estate falling into the hands of a minor in case A. B. die before the husband, for the estate to A. B. being only an estate *per autre vie*, may (notwithstanding its being a freehold) with equal propriety be limited to his *executors and administrators* as to his *heirs*, as they will not take by *descent*, but as *special occupants*. These are also Mr. *Fearne's* words in his opinion above stated.

I shall make but few comments on the method last mentioned, as it agrees in the main with the one now adopted by *B—n.*, and which I shall have occasion to make some remarks on when I come to state that form. With respect to limiting the estate to the *executors and administrators* instead of the *heirs* of the trustee. I have only to remark that, when there is a power of appointment, it is of very little consequence whether the estate to the trustee is to him and his *heirs*, or to him, his *executors*, &c. since the estate itself may be defeated and overreached by an exercise of the power. In practice, the concurrence of the trustee is not always required, but it should be remarked that, if, instead of *appointing*, the purchasers *convey* without the concurrence of the trustee, there is an intermediate estate in the trustee, which, as long as it continues, will prevent a title of dower in the wife of the purchaser. Instances of this have, I understand, occurred.

*B—n's* present form of limitation to prevent a wife's dower, above alluded to, is as follows: *habendum* to the purchaser, his heirs and assigns, to such uses, &c. as the said (purchaser) by any deed, &c. or will, &c. shall appoint, and, in default, &c. and so far as no such directions, &c. shall extend, to the use of the said (purchaser) and his assigns (for life) without impeachment, &c. and after the determination of that estate, by forfeiture or otherwise in his life-time, to the use of the said (trustee) his heirs and assigns, during the life of the said (purchaser) in trust for him the said (purchaser) and to prevent the present or any future wife of the said (purchaser) from being entitled to her dower, in or out of the said premises, and after the decease of him the said (purchaser) to the use of the heirs and assigns of the said (purchaser) for ever.

This form of limitation I most fully approve of, except that I would, for the reasons above quoted from Mr. *Watkins*, have the limitation to the trustee, his *executors and administrators*, and not to him and his *heirs*. There are four limitations or clauses, in the last mentioned form, each of which is material. The first is *the power of appointment*. By means of this power, the purchaser may dispose of and pass the whole fee by executing a mere instrument. The second is *the limitation to the purchaser for his life*; this gives him the present right to the possession of the estate, and the perception of the rents and profits. The third is *the limitation to the trustee for the life of the purchaser*. This intervening estate of freehold keeps the purchaser's estate for life distinct from the inheritance in *fee-simple*, and this prevents even the attachment of any title of dower. The fourth is, *the limitation of the fee simple to the heirs and assigns of the purchaser*; by this limitation, if the purchaser dies without making any appointment or disposing of the premises by his will, the inheritance will vest in his heirs, unaffected by any title of dower in his widow, and without any estate in his trustees, since that estate, if it ever commences, will determine by the death of the purchaser.

The last mentioned form of limitation, therefore, seems upon the whole, free from objection, that is, admitting that the husband is a good trustee for himself, which I think is clear from the arguments I have before stated. If, however, the contrary should be proved, I know of no form of limitation which would prevent dower and yet leave the *legal-fee* in the purchaser, so as to enable him to sell or mortgage, without the concurrence of his trustee. To those who are willing to submit to that inconvenience, I would recommend to limit the estate to the purchaser and his trustee *jointly* (it being certain that a wife cannot claim dower out of a *joint estate*) and to the heirs and assigns of the trustee *only*, and not of the purchaser; otherwise if the trustee should die in the life-time of the purchaser, the estate would survive to the latter, and thereby his wife become dowable out of the premises.

A.

*The Practice of the Court of General Quarter and General Sessions of the Peace.*

WE have received the following from a gentleman who is very conversant with the practice of the *Middlesex Sessions*, and we therefore insert it in the hope that it may be found useful to some of our readers.

*Of the Court of Quarter Sessions and the Practice thereof.*

THE court of general or quarter sessions for the peace, is a court of criminal jurisdiction, held in every county for the trial of felonies, misdemeanors, &c. before justices of the peace for the same county. In discharge of this part of its duty it proceeds by the course of the old common law, viz. by jury. It is also a court of appeal from summary jurisdictions exercised by magistrates below, and in other cases it has and exercises an original summary jurisdiction of itself. A great deal of parochial and county business is by a variety of acts of parliament directed to be settled by this court, as the proper forum, and the whole of its power and jurisdiction is created by various statutes.

In ancient times petty offences, such as nuisances and other trivial matters, were tried and disposed of in the court-leet for the county; crimes of a more aggravated nature were reserved for the justices in Eyre, who rode the circuits once in seven years; but in the reign of Ed. III. it was enacted, "that for the better maintaining and preserving the peace in every county, good men and lawful, which were no maintainers of evil or barreters in the county, should be assigned to keep the peace." Afterwards in the 31st year of the same reign, it was enacted that "in every county should be assigned, for the keeping of the peace, one lord and three or four of the most worthy men in the county with some learned in the law; and they shall have power to restrain evil doers, rioters, and all other barreters; and to take and chastise them, and cause them to be imprisoned and punished, and to inquire of those that have been *pillars* and robbers beyond sea, and go wandering and will not labour; and to take all that

they find by indictment or suspicion, and put them in prison, and to take of them that be not of good fame surety for their good abearing: and also to hear and determine at the king's suit all *manner of felonies and trespasses.*" Before the passing this *latter* statute, they were called wardens and *conservators* of the peace, but when they received the power of trying felonies, they received, saith *Lambard*,\* the more honourable appellation of justices.

This statute gave origin to the court of quarter sessions, and with respect to the justices who are the judges of the court, it is to be observed that they were to be limited to one lord and three or four of the most worthy men in the county. Afterwards, during the reign of R. II. their number was increased to six, and again to eight; but though this statute has never been formally repealed, it has now fallen into disuse, and the number of justices is not limited in any county.

Next as to their qualifications:—The statute of *Edward* requires them to be of the "most worthy men in the county," the statute of 13 Ric. II. c. 11, orders them to be of the most sufficient knights, esquires, and gentlemen of the law; by the statute of 2 H. VI. c. 1, they of the quorum must be resident within their several counties; and, that no improper person might get into the commission, it was enacted by 18 H. VI. c. 11, that none should be put into the commission who had not lands to the amount of 20l. yearly value, which sum was increased to 100l. by stat. of 5 Geo. II. c. 11, with certain exceptions:

And lastly, the justice is now required by stat. 1 Geo. III. to make oath of this qualification.

Justices are appointed by the king's special† commission under the great seal, which appoints them all jointly and severally to keep the peace, and any *two* or more of them to inquire of felonies and other misdemeanors. In which latter business some one or more particular justices are required to be present. These are called justices of the *quorum* from the words in the commission *quorum aliquem vestrum, A.B.C.D. unum esse volumus.*§ But though

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\* 23.

† See *Lambard*, 35, for the form.

§ The first commission of the peace, as we before observed, was

they have by their commission a power to try felonies generally, yet they are directed by it, that if any case of difficulty arises they shall not proceed to judgment, but in the presence of one of the justices of the court of King's

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in the 1st year of *Ed. III.* which ordains justices to keep the peace in lieu of the old wardens of the peace; but by that statute, they have only power to keep the peace, and not the power of trying any felonies. The commission, however, continued to be enlarged from time to time, until the 20th of *Elizabeth*, when, by the number of statutes charged therein, many of which had nevertheless been before repealed, and by much vain repetition and other corruption that had crept into it, partly by miswriting of the clerks, and partly by the untoward huddling things together, it was become so cumbersome and foully blemished, that of necessity it ought to be redressed, which imperfection being made known to Sir. C. Wray, then L. C. J. of the King's Bench, he communicated the same to the other judges and barons, so as, by a general conference had amongst them, the commission was carefully revised, in the *Michaelmas* term, 1590, and being then also presented to the Lord Chancellor, he accepted thereof, and commanded the same to be used: which continues with very little alteration to this day.—*Lamb. c. 9.*

By the commission, as it now stands, they are appointed jointly and severally to keep the peace, and to keep and cause to be kept all the statutes and ordinances made for the good of the peace, and for the preservation of the same. And any two of them or more to inquire by the oath of good and lawful men of any felonies, &c. &c. In this business one of them must be a particular justice, called a justice of the *quorum*, from the Latin words in the commission *quorum unum esse volumus*, A. B. C. D.; one of whom we will to be A. B. C. D. To understand the name of this distinction among the justices, it is to be recollected, that at the time when the commissions of the peace first issued, and for a long time afterwards learning was confined to few persons, even amongst the gentry who were generally in the commission of the peace; it was therefore a wise precaution not to suffer them to proceed to so important a business as the trial of an offender without the presence of some knowing sensible man who was of the *quorum*. But since the general diffusion of learning, this distinction is so much worn away, that it is now usual to insert the whole of them in the *quorum* clause; and it is no objection to any warrant, or other instrument, that it does not appear on the face of it to be executed by one of the *quorum*, although it be necessary that in fact it should be by one of that description.

*Bench or Common Pleas*, or one of the judges of assize. The practice now is to try misdemeanors and petty larcenies, and to reserve more important matters to be tried by the judges at the assizes.

*Custos Rotulorum.*

The principal of these justices is the *Custos Rotulorum*, or keeper of the records of the sessions. The commission further directing him, "that he shall cause to be brought before him and his fellow-justices, at the days and places appointed, the writs, precepts, processes, and indictments, that they may be inspected, and by a due course determined as aforesaid." He is the chief civil officer in the county, as the lord lieutenant is the chief military one; and it is usual in practice to appoint one person to both these offices. The appointment of *Custos Rotulorum* was originally in the lord chancellor, but many improper persons having obtained the grant of the office, to remedy the evil it was enacted by the 37 Hen. VIII. c. 1, "That from thenceforth none should be appointed to the office, but such as should have a bill signed with the king's hand for the same, which bill should be sufficient warrant for the lord chancellor or keeper to insert such person in the commission as *Custos Rotulorum*. It was also enacted by the same act, that the person so appointed should nominate the clerks of the peace, who were to hold their offices during the time that the *Custos Rotulorum* should hold his office.

In fact, the clerk of the peace as appointed, is the efficient officer; and, as much important business is committed to his care, it is necessary that he should be a person of capacity and integrity. To remedy, however, the evil which might arise from any misconduct in a clerk of the peace, by a subsequent statute, 1 W. & M. s. 1, c. 21, it is enacted that, "If any clerk of the peace demean himself ill in his office, the justices of the peace, in their general quarter sessions, or the major part of them, upon complaint and due proof thereof, suspend or discharge him: and in such case, the *Custos Rotulorum*, or other person to whom the right shall belong, shall appoint another person residing within the same county, &c. to be clerk of the peace in his room; and in case of neglect or refusal, to make such appointment before the next general quarter sessions,



the justices at the next general quarter sessions" may appoint; the person thus appointed being, however, subject to all the sureties and conditions above mentioned; and by a subsequent clause, the *Custos Rotulorum* is forbidden to sell the place, under the penalty of both buyer and seller forfeiting their places, and double the sum given or taken, to be recovered by action in any of the courts at *Westminster*; and "Every clerk of the peace is to make oath, in open session, that he has not directly nor indirectly given any thing for his place."

### Of the Time of holding Sessions.

The next point is as to the term of holding a session.\* This, by statute of 2 H. V. c. 4, is directed to be done four times in every year, viz. the first week after *Michaelmas* the week after *Epiphany*, the first week after *Easter*, the week after the *Translation of St. Thomas the Martyr, (Becket)*, which is on the 9th of *July*. It is generally understood to be the true construction of this statute, that the weeks wherein the festivals fall must be concluded before the sessions are held, and the usual practice is to hold them on the *Tuesday*, of the following weeks. But in *Middlesex*, the sessions are held eight times in the year. Though by the statute of 14 Hen. VI. c. 4, they are required to hold it only twice in the year. "The court of *King's Bench* being in that county," is the reason given by the act. Now it is to be remembered that at the time of passing that act, the *King's Bench* had not acquired (which it since has by fiction) a concurrent jurisdiction with the *Common Pleas* in civil cases; but its principal business was on the criminal side. Since that time, however, the situation of things has been entirely reversed, the chief business of the court now being on the civil side; the criminal part is therefore dispatched by the courts of quarter sessions, and of *Oyer and Terminer*. The necessary consequence has been, that instead of twice, they now sit eight times in the year. The justices of *Middlesex* have also a commission of *Oyer and Terminer*, which enables them to try any matter not cognizable under their commissions of the peace; but the practice is to transmit the higher offences to be tried by the judges,

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\* *Vide* 12 R. 2, c. 10.

who always sit at the same time at the *Old Bailey* under a commission of *Oyer and Terminer* and jail delivery.

Though by the words of their commission, they are empowered to try felonies generally, yet it is to be understood to extend to such crimes only as were felony at the passing of the statute, for they have no jurisdiction over any new created felony, unless the act also gives them a power to try it.

### *Manner of holding Sessions.*

Previous to the time appointed for holding sessions, any two justices issue a precept to the sheriff of the county, "commanding him on the part of the king, that he cause to come before him, and their fellow-justices on a certain day, and at a certain place therein specified, twenty-four good and lawful men of the body of his county, to inquire, present, do, and perform all and singular the things, which on the part of our lord the king shall be enjoined, there, and further that he make the same return to all justices that they may be there with their rolls, records, &c.

By virtue of this precept, the sheriff summons the jury, who are required to be in the court at the time appointed.

On the day for holding the sessions, the following persons ought to attend the court.

1st, The *justices*, as judges, without a sufficient number of whom the sessions cannot be held, and they ought also to return all the recognizances taken before them since the interval of the last session; 2nd, the *Custos rotulorum*, by himself or his deputy, the clerk of the peace; 3d, the *sheriff*, by himself or deputy, to return the pannel of jurors, and also to receive fines imposed by the court; the *constables of hundreds* to whom any warrant has been directed, and also the bailiffs of hundreds; 4th, the *goaler* to give calendars to the justices and officers of the court, and also to receive into his custody such as may be committed by the court; the *keeper of the house of correction* to give an account of such rogues and vagabonds as have been committed to his custody. This he is required to do by the statute 7 James, c. 4. s. 9, or in default the justices are empowered to fine him; 6th,

*all the jurors* summoned by the sheriff, in consequence of the precept directed to him; 7th, all coroners; 8th, and lastly, *all persons* who have been bound over to appear to prosecute, answer, or give evidence, and all who have been subpoenaed.

The court being assembled, the crier opens the court by proclamation, requiring all persons who have any thing to do at that sessions to draw near and give their attendance. This being done, the clerk of the peace or his deputy calls out the names of the grand jury returned on the pannel by the sheriff as the grand jury. They should answer to their names as they are called, and take the oath. If by neglect of the jurors there should be a deficiency, the court orders a fine to be inflicted, unless the juror afterwards comes in and shews a reasonable cause to excuse his absence, such as sickness, or being subpoenaed to attend another court.

A sufficient number of jurors appearing, they are then sworn not to present any one for hatred, ill-will, or malice; nor to leave any one unrepresented through hope, fear, favour, or reward; and then if any particular business is expected to be brought before them, the chairman, in a charge, instructs them in the nature of their duty: but if nothing more is expected than business of course, they usually immediately withdraw, to examine evidence in such bills as are ready for them. The duty of the grand jury is only to examine whether there be sufficient ground to call upon any one to answer the charge imputed to him, and therefore, they only examine witnesses on one side on behalf of the prosecution; if they think that the charge is groundless, they indorse on the back of the bill, "not found," and then the party is entitled to go without further inquiry; but if they think that the party ought to be put upon his trial, they indorse "a true bill," and the bills found they carry and publicly deliver into the hands of the clerk of the peace in the court.

The clerk of the peace having thus received the bills from the hands of the foreman, he addresses the jury thus, "Gentlemen, you agree the court shall amend matter of form, and false English, altering no matter of substance." The jury not signifying any disapprobation, he proceeds to read the bills aloud, as thus: "A true bill  
N°. 27. [ N ]

against A. B. for an assault;" or "not found against C. D. for a larceny." When a bill is not found, the crier calls out to the prosecutor aloud, that he may depart the court, as thus: "A. B. you may depart the court, your bill is not found." When, on the other hand, the bill is found, if it be for larceny or felony, the prosecutor is directed to give his attendance at a certain time and at a certain place; if it be for felony, he is directed to attend the *Old Bailey*, or if it be a country session, the assizes; the crier proclaiming as follows, "A. B. attend [the *Old Bailey* or the assizes as the case may be,] with your witnesses, on [*Wednesday morning*;" or if it be a petty larceny which is tried at the sessions, the prosecutor is directed to attend there. In misdemeanors, however, the crier makes no proclamation, the clerk of the peace only reading aloud whether the bills presented be found or not: the reason of this difference is, that the *defendants*, in cases of misdemeanor, are not usually in custody, but out upon bail; in which case they cannot proceed to trial without giving the prosecutor due notice.

*Of appearing and pleading.*

When a bill is found against any person, the next process is to bring him in to plead, supposing him not in custody, or not bound over previously by some magistrate to appear at the sessions, to answer the charge.—This may be done by motion to the court for a Bench warrant, under which the party may be apprehended and brought before the court. If an application be made to the Bench, during the sittings of the sessions, the prosecutors, upon application at the office of the clerk of the peace, may have a certificate of the indictment being found. Upon which certificate, any judge of the court of King's Bench, or any justice of the peace, will grant his warrant to apprehend the offender, and either oblige him to give bail, for his appearance at the next sessions, or commit him for want of sureties. There is a distinction between a judge's warrant, and one from a justice of the peace. The former is directed to his tipstaff and to all constables, and may be executed in any part of *England* without more; but the warrant of a justice of the peace cannot be executed out of the

county for which he has a commission to act. Therefore if a *defendant* be gone into another shire from that in which the warrant has been obtained, it is necessary to make application to a justice of that county wherein the *defendant* is, or is supposed to be, and upon oath being made that the *defendant* is believed to be in that county, the justice will indorse the warrant, and then the party may be arrested under it. The effect of such indorsement is to give it the power of an original warrant issued by the justice, and when the party is arrested, and brought before either a judge, if taken under a judge's warrant, or before a justice of the peace, he must give bail for his appearance at the next sessions to answer the charge contained in the indictment, or in default of such bail, be committed to prison. If the party be taken under a warrant from a justice of the peace, it is usual to admit him to bail immediately, except in cases of enormity; but in all cases where the party is taken under a judge's warrant, it is necessary to give twenty-four hours' notice of bail, in order that their responsibility may be inquired into. But if a *defendant* be taken during the circuits, or in any place remote from a judge's chambers, in such case a justice of peace may take bail, the like notice being given as in the former case.

### *Plea and Issue.*

The party indicted appearing in court, according to the condition of the bail-bond given as above for his security, the clerk of the peace reads the indictment to him, and asks him, "Are you guilty or not guilty," to which the party answers, "Not guilty." This is the mode by which the party pleads the general issue. The solicitor for the *defendant* then gives a note of the names and additions of two house-keepers as bail for the party, and the clerk of the peace takes a recognizance from them, together with the party himself, that he shall appear at the next sessions and try the traverse. This is in case the general issue is pleaded; but if the *defendant* be indicted by a wrong name or addition, he may plead specially in abatement. For the statute 1 H. 1. c. 5, requiring that in every process, whereon process of outlawry shall issue, the party shall be truly accused with his proper addition, any error of these mat-

ters may be pleaded in abatement : all this is to ascertain the person with exactness. But if a person pleads to the indictment, he admits himself to be the person, and after that he cannot take advantage of the mistake. In outlawries, however, it is bad ; for where the person has never pleaded, it will be reversed for a mistake of this sort.

If the party means to plead in abatement, when the indictment is read, instead of pleading verbally, he must deliver to the clerk his special plea ingrossed on parchment and signed by counsel ; when that is done, the clerk takes bail as in the former case conditioned to try the issue of the plea, and if that should be found against him, then to plead the general issue *instantly*, and go to trial upon it.

Previous to the next sessions, when the cause stands for trial, the solicitor for the *defendant* must apply to the clerk of the peace, and take out a *venire*, under which the sheriff returns a jury, and the clerk of the peace enters the cause in the traverse paper in the order that the *venire* is taken out, and it is called *on for trial* in its turn. It is also necessary for the *defendant* to give the prosecutor four days notice of such being his intention.

### *Subpœna.*

On the day appointed for the trial, the *defendant* must personally appear in court at the bar, and the prosecutor then proceeds with his evidence to establish his case. If, however, the prosecutor should not appear when called upon, the person who served the notice of trial must make an affidavit of the fact where and when it was served, with a copy of the notice annexed to the affidavit ; upon this being done, and no prosecutor appearing, the *defendant* will be acquitted for want of evidence. If the prosecutor appears, and the *defendant* be convicted, the court then pronounces a judgment, either by fine or imprisonment, apportioned to the nature of the offence.

If the *defendant* be acquitted, then he pays the fees of the court, and the jury ; but if convicted, then they are paid by the prosecutor ; so that in some cases where only a trifling fine is imposed, it is more for the advantage of the *defendant* to be found guilty than to be acquitted ; for which reason, in a case of trifling assault, it is better to plead guilt.

ty in the first instance, especially as the court will examine any witnesses one may produce in mitigation of the punishment. It is necessary, however, to give notice of such intention of pleading guilty to the prosecutor.

An indictment for an assault is now looked upon as almost a civil remedy ; for it frequently happens that the court recommends it to the prosecutor to talk with the *defendant*, that is, to endeavour to accommodate the matter between themselves, and if the prosecutor comes and acknowledges a satisfaction, the court will, if there has been a verdict of guilty, set a small fine upon the *defendant* merely as a nominal punishment: or if before trial the *defendant* can produce an acknowledgment of satisfaction under the hand of the prosecutor, accompanied by an affidavit that the deponent saw him execute it, the court will, upon motion, respite the *defendant's* recognizance *sine die*. This opinion is now so far prevalent that if a *defendant* has an action brought against him for the same offence, he may apply to the Attorney General for a *noli prosequi* to be entered upon the indictment ; for this purpose it is necessary to obtain a certificate from the clerk of the peace of the substance of the indictment, and the time when it was preferred ; to which certificate must be annexed an affidavit that the deponent did see the clerk of the peace sign the certificate thereto annexed, on such a day, and that since, or before that time (as the case may happen) the deponent was served with a *capias* issuing of his majesty's court of *Common Pleas* at the suit of the prosecutor of the first indictment, returnable, &c. &c.

Upon this the Attorney General will grant a summons calling upon the prosecutor to shew cause why a *noli prosequi* should not be entered. If the prosecutor attends, and the case be not of a nature to call for a public example, he must make his election whether he will proceed by the action or the indictment. If he does not attend, upon affidavit of the service of these summonses, the Attorney General will grant a warrant under his hand and seal to the clerk of the peace to enter a *cessat processus* on the indictment.

#### *Appendix.—The Commission of the Peace.*

George III. by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and so forth, to A. B. C. D. &c. greeting ;

Know ye that we have assigned you jointly and severally, and every one of you our justices, to keep our peace, in our county of W. and to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles in our said county (as well within liberties as without) according to the force, form, and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done, according to the form of those ordinances and statutes; and to cause to come before you or any of you, all those who to any one or more of your people, concerning their bodies or the firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour towards us and our people; and if they shall refuse to find such security, then, them in our prisons, until they shall find such security, to cause to be safely kept.

We have also assigned you, and every two or more of you (of whom any one of you the aforesaid A. B. C. D. &c. we will shall be one) our justices to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, enchantments, sorceries, arts, magic, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever; and of all and singular other crimes and offences of which the justices of our peace may or ought lawfully to inquire, by whomsoever and after what manner soever, in the said county done or perpetrated, or which shall happen to be there done or attempted; and also of all those who in the aforesaid county in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride: and also of all those who have there lain in wait, or hereafter shall presume to lie in wait, to maim or cut, or kill, our people: and also of all victuallers, and all and singular other persons, who in the abuse of weights or measures, or in selling victuals, against the form of the ordinances or statutes, or any one of them therefore made, for the common benefit of England, and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or at-



tempt; and also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county; and of all and singular articles and circumstances, and all other things whatsoever, that concern the premises or any of them, by whomsoever and after what manner soever, in our aforesaid county done or perpetrated, or which hereafter shall then happen to be done or attempted, in what manner soever; and to inspect all indictments whatsoever so before you, or any of you taken, or to be taken, or before others, late our justices of the peace of the aforesaid county, made or taken and not yet determined; and to make and continue processes thereupon, against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken; surrender themselves, or be outlawed; and to hear and determine all and singular the felonies, poisonings, enchantments, sorceries, arts magic, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, and indictments, aforesaid; and all and singular other the premises according to the laws and statutes of England; as in the like case it has been accustomed or ought to be done; and the same offenders, and every of them, for their offences, by fines, ransoms, amercements, forfeitures, and other means, as according to the law and custom of England, or form of the ordinances and statutes aforesaid, it has been accustomed or ought to be done to chastise and punish.

Provided always, that if a case of difficulty, upon the determination of any of the premises before you, or any two or more of you, shall happen to arise, then let judgment in no wise be given thereon before you, or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county.

And therefore we command you and every of you that to keeping the peace and ordinances, statutes, and all and singular other the premises, you diligently apply yourselves; and that at certain days and places which you or any such two or more of you as is aforesaid, shall appoint, for these purposes, into the premises you make inquiries

and all and singular the premises hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains according to the law and custom of England, saving to us the amercements, and other things to us therefrom belonging.

And we command, by the tenor of these presents, our sheriff of *W.* that at certain days and places which you, or any such two or more of you as is aforesaid, shall make known to him, the cause to come before you, or such two or more of you as aforesaid, so many and such good and lawful men of his bailiwick (as well within limits as without,) by whom the truth of the matter in the premises shall be the better known and inquired into.

Lastly, we have assigned to you the aforesaid A. B. keeper of the rolls of our peace in our said county; and therefore, you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid, in witness whereof we have caused these our letters to be made patent.—Witness ourself, at Westminster, &c.

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THE READING UPON THE STATUTE OF USES OF FRANCIS BACON, afterwards Baron of Verulam, and Viscount St. Alban, Lord High Chancellor of Great Britain. A new Edition, with very full Notes and Explanations, and a copious Table of the Contents. By WILLIAM HENRY ROWE, Esq. Author of Observations on the Rules of Descent, and on our Law's Disallowance of lineal Ascent. Brooke and Clarke, Bell-yard, London. 1804.

FRANCIS BACON, Lord *Verulam*, is amongst the most illustrious of our countrymen. Nearly two centuries which have elapsed since his death, have not produced three names which can be placed in the same rank with him ; and, if we consider the time in which he appeared, the variety of his attainments, and the great influence which his example has had in directing the studies of others, insomuch that he may be called the father of the *experimental philosophy*, and the inventor of the *method of induction*, by which alone we are enabled to make true discoveries in science, we shall be lost in grateful admiration of his vast mind and happy genius. Nor has the world been ungrateful to his fame ; not his own countrymen only, but all *Europe*, the *Asiatic Indies* which they have conquered, and that larger quarter of the globe, which in his days was but just begun to be colonized by his countrymen, and is now rapidly advancing in population and in useful arts, to vie with the *old world*, *America* ; all pay ample homage to his memory, and assign him a place in the temple of fame amongst the first founders of science, who are the benefactors of the world, and whose rank, in the eye of reason, far above its conquerors. His, in a word, has been that fame which *Cicero*, in his *Somnium Scipionis*, has given to his hero, and yet tells him it avails little, because it is confined within the bounds of a single planet, and passes not "*extra flammantia mania mundi*." It has filled nearly all the civilized world, and has extended wherever his own tongue, or the language long sacred to learning, the language of *Cicero* and of *Virgil*, are known. He has become proverbial for extensive knowledge and for universal celebrity ; and, would we stimulate youth to industry in the pursuit of learning, and yet check the presumption of vanity, by marking the insignificance of all sublunary things, we bid them in the words of the poet, "think how *Bacon* shined."

Such is the original author whose work is now before us. Like *Aristotle*, he was the founder of a new sect of philosophy, and was master of all sciences; like *Plato*, he may be said, in his *essays*, "to have brought *philosophy* from the *gods* to dwell amongst *men*;" to have taught us that 'tis little to study the works of nature, and to pry into the grand *arcana* of her operations, if we do not also "know ourselves;" to have afforded the first and perhaps the best example of that species of moral writing which "speaks home to men's business and bosoms," and teaches that science which has been called "the proper study of mankind," the knowledge of man; a species of writing in which he has been followed by many, and amongst the rest by *Addison* and by *Johnson*, yet by none has he been surpassed. Add to this he was an *historian*; "and that, as a *scholar*, he was a ripe and good one," in an age when every one was ambitious of learning. He was also an *orator*, amongst the first of his time. He was a *lawyer* too, who attained the highest rank, and reaped the greatest emoluments of his profession. And in this sphere he stopped not at the labour of *practice*, the accumulation of wealth, which he despised, nor yet at the acquisition of titles; he was even here a teacher, a corrector, an institutor, a founder.

In this latter character, however, he has, comparatively with his other attainments, been little known, and strange to say, so great has been the admiration of his other excellencies, that one who wrote his life\* forgot that he was a lawyer; forgot that he offered proposals to two successive *princes* for a *digest* of the whole law, that he planned the amendment of the statutes, that he dug deep to the foundations, that he laid bare, as it were, the very roots of *law*, and explained and exemplified the chief of its fundamental *maxims*; that he in a great measure new modelled the court of *Chancery*, in which he distributed justice, and rendered more accessible and secure that temple in which *equity* presides to temper the severity of *law*; forgot that he wrote the work before us, on a subject

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\* Mallett—of whom it was wittily said, that, had he written the life of *Marlborough*, as he promised, he would have forgotten that he was a *General*.

of the greatest difficulty, yet of the highest interest, and the most deeply rooted and interwoven with the essential nature of real property; a work which alone would have been sufficient for the establishment of any other man's fame.

In contemplating such a character, amongst a crowd of other sensations, we catch a spark of enthusiasm, we attempt to write his eulogy, we look up to him as one of the boasts and glories of the *law* and of our country.\*

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\* We hope it will not be deemed wholly impertinent in us to take the opportunity of observing, that our *Law Societies* or *Inns of Court*, are greatly wanting in that enthusiastic regard for the memory of the great characters that have risen among them, which distinguishes every other learned body in this kingdom and in *Europe*. *Cambridge* boasts her statue of *Newton*; *Oxford* displays many memorials dedicated to her worthies; even *Holland* has her *Erasmus*, still attracting the admiration of the passenger in venerable brass. In our *Inns of Court*, we have open squares, in which such monuments may be raised with advantage, and the societies are rich; yet in them we see none of the ornaments of the seats of learning. They are all open and bare, or disgraced by spouting fountains, leaden pumps, or wretched obelisks in standing pools: yet they have produced a *Hale*, a *Mansfield*, a *Bacon*, and the stranger looks in vain for their statues. If he inquires for them, he may be told, perhaps, that they have indeed some memorial, for their names are painted, and their arms emblazoned on the windows in perishable glass, but this is all.

*Gray's Inn* is now erecting a row of *Chambers* in the *Gardens*, which are to be named *Bacon's Buildings*. May we not be permitted to express a hope that she will do tardy justice to the worthiest of her sons, and place a statue on the front, under a small dome or little temple, to be railed round. This would inspire the students with the ardour which ought to belong to the members of a society out of which he sprung, in which he studied, and in which he read. They may even apply to the buildings the old legend which is told of *Friar Bacon's Study* at *Oxford*, that the mansion will tumble to the ground, when one greater than he shall reside in it. We know we may be told that *Bacon* wants no statue to secure his fame; that he has raised himself a monument more durable than brass. But we consider statues and monuments less in honour of the dead than as mementos to the living. And, though *Bacon* needs it not, we do not know how the society could do a greater honour to themselves.

But we have forgotten ourselves ; we have raised our imagination beyond our proper sphere, and we must descend. We are not the *eulogists* worthy of a *Bacon*, we are doomed to be the conductors of a [*monthly*] *Journal*, and to pen a plain honest account of a new edition of a well known book. We correct ourselves, therefore, and submit patiently to our labour ; and we confess that there are few works which have yet passed before us, to which in being called from such a *reverie* as that from which we are now awakened, we should have turned with more satisfaction ; nor is there one, which, in the reviewing of it, we have been induced to examine more closely, not only from the celebrity of the original author, but from the peculiar merit and excellence of the present edition, which are so apparent as to be immediately discoverable.

In giving an account of the plan and the object of this edition, we think it best to let Mr. *Rowe* speak for himself.

“ My Lord Bacon's Reading upon the Statute of Uses— of which a new edition is now presented to the profession — appears to have been first printed in the year 1642, a period of about sixteen years after the death of the learned author, and of about forty after its delivery to the Society of Gray's Inn ; and the numerous errors with which that impression of the work abounds are of such a nature as to render it manifest, not merely that it could not have been printed from a correct copy, but that the press was not superintended by any person who was in the least conversant with the learning of uses.

“ In one of those excellent annotations with which Mr. Hargrave and Mr. Butler have enriched the before invaluable Commentary of Lord Coke upon the Tenures of Littleton, the former of those gentlemen\*, at the same time that he spake in high terms of the excellence of the work itself, took notice of the extreme incorrectness of the various editions of it ; and accordingly, when it was next printed amongst his lordship's other works, many corrections were made.

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\* Co. Litt. 13, a. n. 64,

"Those corrections are all preserved in the last edition of the work which was published in the year 1785, and some additional ones made—the persons who had the management of that edition, having had, as they stated, an opportunity of improving the work with the further corrections of a gentleman of considerable knowledge and experience, who had made a very attentive perusal of it, and corrected it in a great number of instances.

"The alterations, however, which first took place in the last edition, merely had in view the removal of a few palpable errors, and indeed, some of those alterations have been made with so little judgment, as to have occasioned a perversion of the real meaning.

"It is by no means the wish of the present editor to detract from the merit, to which, they who prepared that edition for the press are in any degree entitled; so very different is his disposition towards those persons, although he knows them not, that as often as he has suffered any corrections which were made in that edition to remain in the present, he has in justice to them, invariably signified at the foot of the page where such corrections occur, that they were first inserted in the last edition.

"The same motives have induced him to place between brackets so much as he is responsible for of the matter which is contained in the margin of the text, in order that it may be distinguished from what is to be found in the last edition also.

"With respect to the last edition it is further to be observed, that it contains many errors of the same description with those it has corrected, and that it is without a single note or observation of any kind, either to illustrate and explain the text where it is obscure, or to point out wherein any of the learned author's positions were at variance with the opinions of the other great characters of his own day, as well as in what respect, or to what extent their solidity has been shaken by more modern determinations. Neither does it contain any table of the contents of the work, although such a table would be very useful to the reader in his occasional references to it.

"Thinking that an acceptable service would be rendered the profession by an edition which would amend the inaccuracies, and supply the defects of the former ones, the present editor resolved upon the attempt; and he will have great reason to rejoice at his labours, if in the judgment of the learned reader, he shall be thought to have discharged *even a small* portion of that debt which a great lawyer has

truly said every man owes to the profession of which he is a member ; for, having felt the difficulty of the task which he imposed upon himself, the editor has not the vanity to suppose that he has executed it in a manner even bordering upon perfection, and much less has he the presumption to expect that it will be so received.

"The editor confesses, however, that his ambition of being thought to deserve well of the profession, prompts him to foster the hope that the present edition, although it may fall short of what might have been achieved by greater talents, will notwithstanding be found to possess a larger share of merit than those by which it has been preceded, and he has too high an opinion of the candour and liberality of the profession, not to believe that the sentiment of Horace, *est quôdam prodire tenus, si non datur ultra*, will suggest itself to their minds upon the present occasion.

"Having, in pursuing his course of legal study, acted, at least so far as it is practicable, upon the scriptural maxim to *try all things* and to *hold fast only that which is good*, the editor has felt little disposed to take upon trust the opinions of other men, or to accept alloy as genuine gold, merely because it hath, as such, obtained a limited circulation : on the contrary, he has been accustomed to examine as to the stability of the foundation upon which the doctrines now in vogue rest, and whether they are reconcileable with the grounds and principles of more ancient times.

"From the research which was necessary to put those doctrines to the test, a conviction has arisen that many of them are untenable ; and in going through the following work, he felt himself compelled to differ in many very important instances from certain modern writers ; but wherever it has happened, the arguments on each side of the point disputed are laid before the reader, and the reasons which have obtained the ascendancy in the mind of the editor are pointed out ; but as it is the opinion which is attacked, and not the author of, or the person who has espoused that opinion, the editor, where he has had occasion to controvert the arguments of *living* writers, has not thought it necessary—but that it would have been rather indelicate—to mention them by name, or to make a direct allusion to them by a reference to their works.

"The editor hath also in a few instances ventured to canvass the conclusions of the noble and profoundly learned author himself : and in order that the imputation of arrogance may not attach upon him on that account, he begs leave to assure the reader that wherever he has done so, it has been with



feelings of the deepest humility : but the truth is, that in most of those instances, characters so eminent have differed in opinion, that, as Sir Martin Wright said upon some occasion, 'bare authority ought to have little or no influence upon the judgment, and a person may without vanity or danger of censure, lean towards his own understanding.'

"There are a few (of what at this period would be considered) inaccuracies still remaining in the language ; but the editor held the text to be sacred, except in those places where the supposed meaning of the author demanded an alteration ; and every alteration has been made under the supposition that had the work been first printed from a correct copy, they, instead of now being called for, would have been originally in the first edition. Every alteration also is particularly pointed out in the notes, and the imperfections which remain, are not such as to prevent the sense from being easily collected.

"It must be admitted that in some of the notes the recurrences to first principles are more frequent than would have been requisite to convey the sense to the minds of many readers, but readers of that description will, it is hoped, admit the propriety of the arguments not having been put with all the point and brevity of which they were capable, when it is considered, that, by so doing, they would have been rendered incomprehensible to young students, whose minds cannot be supposed to possess the necessary leading ideas upon the topics discussed. The editor is anxious that this excuse should be admitted by the learned reader, because he knows how very irritating to the mind it is to have the attention solicited to remarks of inferior moment, when one is eager to get at the very pith of the argument.

"Conceiving that studied ornaments of style in law treatises are but meretricious decorations, and that the appeal should be to the reason and not to the ear more, the editor has not wasted his time by any attempt of that kind ; his only aim has been perspicuity, and with that view he has clothed his ideas in the language which first presented itself, and consequently, has addressed the reader in pretty much the same terms as if he had been discussing the subject with him in person.

"The fear of being charged with the affectation of learning and deep investigation has not prevented the editor's giving such references as appeared to him to afford the fullest sanction to his conclusions, however ancient the authority may have been, and one object which he has not lost sight of,

is to refer to those authors to whose penetration and discernment we are indebted for subtle and important distinctions, rather than to writers who having borrowed those distinctions without any acknowledgment, have endeavoured to pass, what is their's by adoption only, as being the legitimate offspring of their own minds. It is not meant that such trivial ideas as could not fail to strike every reflecting reader ought always to be referred to their original source; or that it has been done by the editor in the present instance, for it would be useless, nay, in many cases impossible; but surely where writers avail themselves of the ideas of others—and of such ideas too as could have been first elicited only by superior minds—it is acting unjustly not to admit the obligation; and certainly it is a piece of conduct not the most honourable, where the object of such writers is to take the whole credit to themselves.

“Where the notes are long, and the point spoken of in the table of contents doth not constitute the principal matter of them, there is, for the reader's greater ease, a reference, not merely to the note, but to the particular page wherein the point referred to is mentioned.

“The references from the table of contents and the names of cases, are to the pages as marked in the present edition, but the references from the notes are to the pages of the last edition, and which are preserved in the margin of the present.

“When the editor perceived to how great a length the notes which he had written extended, he deemed it prudent to omit so many of them as did not appear to him to be absolutely called for by the matter of the text, and indeed to lop off some small ramifications unto which some of the notes which are retained had originally extended, from the fear, that otherwise the price which it would have been necessary to set upon the work might have been objected to.

“With respect to the present price of this edition, the editor begs leave to observe, that although it is so much greater than that of the former impressions, yet he trusts that it will not be deemed exorbitant, when it can scarcely be expected, on account of the very limited sale of such a work, that he shall be repaid the expences of printing and publishing.

“Many of the notes which are reserved, contain a discussion of some very important unsettled points arising out of the Law of Uses, and, should the editor be so much flattered by the favourable reception of his notes on the present work as to justify a belief that the publication of the former would

be acceptable, he will feel at once happy and proud to present them to the profession in some other shape.

"Into the hands of the learned reader the editor presumes to commit this edition of Lord Bacon's Reading upon the Statute of Uses, deeply impressed with the conviction, that for so much as he is responsible, (and he hath in the course of the notes hazarded many observations in the way of argument, for which he cannot shelter himself under the authority of any former writer,) he stands in need of the utmost candour and indulgence; but at the same time confident, that when the great intricacy and abstruseness of the subject is considered, that indulgence will not be withheld."

On this prefatory address we cannot help remarking, that the assumption of so bold a *motto* as this "*to try all things, and to hold fast that which is good,*" in so vast and laborious a study as that of the law, is worthy of one who has *Bacon* constantly before him, and ventures, by conjectural criticism, to restore his text from the corruptions with which, by a negligent and posthumous publication, it has been tainted. Perhaps no one of liberal feelings, or who is anxious for the improvement of science, will be indignant at his presuming to question the doctrines of any author, ancient or modern, when he does it with becoming temper, and approaches to the contest with the necessary training of study, and with skill adequate to the task. Much less shall we be inclined to dispute the propriety of rejecting all "*meretricious decorations,*" all the "*falsa ornamenta*" of style; by which, however, we would not be understood to discard neatness, propriety, elegance, or vigour of language, and even occasional eloquence, where a subject demands, or will support it. And, lastly, much less shall we accuse the author of "affectation of learning," in having recourse to ancient authorities to sanction his conclusions; for we are fully impressed with the belief that, if the science of the law is to be improved, it is only by having recourse to first principles, to early authors, and to the light of reason, and by strictly comparing the modern authorities with the old, "*by trying all things, and holding fast that which is good.*"

What labour he prepares for himself, who undertakes this, and how small at last may be his reward, Mr. *Rowe* seems to anticipate, when he professes to feel but little hope that he shall be repaid the expence of his work,

We hope, however, and expect, that he will find the event otherwise, and we wish his publication the success which it deserves.

Of the original work, it can hardly be necessary for us to speak in praise, but we may observe, that it partakes strongly of the character of its author's great mind. It is recondite and clear, methodical and exact, yet bold and original, and characterised by a style more nice and energetic than that of his contemporaries; nevertheless the genius of *Bacon* seems somewhat restrained by the quaint method of *expositions, divisions, differences, grounds, and diversities, like law and contrary law*, which as a reader he deemed it necessary to follow. Yet, thus trammelled, as he plainly is, when the occasion inspires, he is metaphorical and eloquent, as in the opening; at other times he speaks with the fervour and ease of one arguing *extempore*, and addresses his audience as if disputing in conversation. In many passages he condescends to be witty, and tempers the gravity of his discourse with a pun, yet not without some shew of argument. Thus, after shewing that the clause *ad opus et usum* was not in use till the time of Richard II. when the law Latin became less pure, an argument by which he endeavours to shew that "the experience and practice of uses were not ancient, he proceeds thus: "Whereas this phrase, *ad opus et usum*, and the words *ad opus*, is a barbarous phrase, and like enough to be the penning of some chaplain that was not much past his grammar, where he had found *opus et usus* coupled together, and that they did govern an *ablative* case; as they do indeed, since this statute, for they *take away* the land and put *them* into a conveyance.\* This, it may be observed also, though it might be spared, is not quite of the frivolous and impertinent nature of *Coke's* conceits, who often quotes from *Scripture* or from the poets, without illustrating his argument, merely to shew his reading, and gives a *dull pun* instead of a *derivation*; here is indeed a pun, but here is also the playfulness of a mind upon

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\* Q. Is there not in this and all the editions an error in the punctuation, and should there not be a colon after the words "the land," as well as after the words "ablative case?" That is to say, should not the words, "as they do indeed since this statute for they take away the land," be put in a parenthesis?

the full stretch in argument, and which, though it exults and gambols, like a hot horse, with an overflow of vivacity and vigour, yet tends towards the goal, and brings you swiftly to it. This is indeed the character of all his conceits; for he possessed genuine *wit*, which *Coke* wanted, and his mind was naturally more vigorous. But that for which this reading is the most remarkable, and in which the genius of *Bacon* stands conspicuous, is, that in many passages we meet with a research into the foundations and principles of law, as an universal rule of right, and as something founded in nature; and an explanation of the reason of those things, which to less judicious observers would seem arbitrary. As instances of this we beg our readers to refer to the difference stated between uses and cases of possession, and the reason why want of consideration leaves the use in the feoffor.\* Also to the conclusion of the first discourse, where he shews that "an *use* is no more but a general trust, when any one will trust the conscience of another better than his own estate and possession, which is an accident or event of human society, which hath been and will be in all laws, and therefore was at the common law, which is common reason."† And lastly, amongst a crowd of other passages, to that in which he explains, in some sort, why the law requires an unanimity in juries in bringing in their verdicts, which he does as follows:

2. "For trials, no law ever took a straighter course than evidence should not be perplexed, nor juries inveigled, than the common law of England; as on the other side, never law took a more precise and straight course with juries, that they should give a direct verdict. For whereas in a manner all laws do give the triers, or jurors, which in other laws are called judges *de facto*, a liberty to give *non liquet*, that is, to give no verdict at all, and so the case to stand abated; our law inforceth them to a direct verdict, general or special; and whereas other laws accept of plurality of voices to make a verdict, our law inforceth them all to agree in one; and whereas other laws leave them to their own time and ease, and to part, and to meet again; our law doth duress and imprison them in the hardest manner, without light or comfort, until they be agreed, in consideration of straitness and coercion; it is consonant, that law do require in all matters brought to issue, that there be full proof and evidence; and therefore if the

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\* P. 13 and 14.

† P. 29.

*matter in itself be of that surety as in simple contracts, which are made by parol without writing, it alloweth wager of law.\**

"In issue upon the mere right, which is a thing hardly to discern, it alloweth wager of battail to spare jurors, if time have wore out the marks and badges of truth: from time to time there have been statutes of limitation, where you shall find this mischief of perjuries often recited:† and lastly, which is the matter in hand, all inheritances could not pass but by acts overt and notorious, as by deeds, livery, and records."

On this passage we may remark, that there seems a want of some emendation in the text, where we have marked it by printing in italics. We think the sense requires the word *not*, or perhaps something more to be inserted; as "*thus and therefore if the matter in itself be not of that surety [capable of full proof and evidence] as in simple contracts, &c.*" This we submit to Mr. Rowe, and we are so well pleased with his conjectural criticisms, that we are willing that it should stand or fall by his judgment.

Having dwelt so long upon the original text and the genius of the author, it now becomes necessary that we should speak of the commentary and the skill of the commentator.

The first thing remarkable, and, we add, praise-worthy, in this edition, is the great number of emendations which the editor has made in the text; some of them to give a totally different sense from all other editions, others to explain material distinctions, and many to elucidate that which, in the former text, was wholly unintelligible. We must undoubtedly regret that Mr. Rowe was not able, if he made any inquiry, to discover any *manuscript* copy of this reading, from which actually to restore the text to its original state; but in the absence of this, conjectural criticism was his only resource. It is indeed a perilous task; an arduous field, in which many a critic has been defeated; in which the doughty *Baxter*, the slashing *Bentley*, the ardent *Wakfield*, and the vehement *Geddes*, have often failed. Mr. Rowe has not been less industrious than these: he has used the pruning-hock and the grafting-knife with a liberal and a skillful hand, and we must say that if he does err sometimes, on which we will not ven-

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\* See note 58.

† P. 36.

ture to decide, he adduces most plausible reasons for his alterations, and in most instances is indisputably correct. So many are these instances, and so much was this correction wanted, that we question if there are not numberless students who have turned aside with disgust or weariness from the reading of *Bacon*, merely through embarrassment with the interpreting of some difficult and obscure passage, which in this edition is luminous and clear.

Of these emendations, it was at one time our intention to have given a complete list, and to have discussed all of them as far as we were able. The labour of making such a collection would have been considerable, but we should not have shrunk from it. Our reason for desisting from the attempt was, that we feared it might have in a great measure forestalled the sale of this edition, as many would be satisfied with a corrected text, and be contented to read the original, so restored, without the notes. We shall therefore content ourselves with observing that of 150 notes in the whole, there are a considerable number which contain arguments in support of alterations in the text.

Note 1, p. 5, relates to an error which is supposed to have been committed in the last edition, by stating in the margin that the beginning of Discourse I. relates to the nature of uses before the statute. Note 2, p. 6, discusses the sense in which *Littleton* considers an use as a tenancy at will, and after shewing some mistake in *Bacon's* statement of *Littleton's* doctrine, and that it is not, as he says, controlled by the cases in *H. VII.* the editor, Mr. *Rowe*, proceeds to controvert the opinion of *Littleton*, and to shew that the *cestui que use* never could have any estate at law, and therefore that his taking of the profits, or his use cannot be a tenancy at will. The whole of the note is ingenious, acute, and we think just and well founded, and it is no bad specimen of Mr. *Rowe's* ability for his undertaking: but we must refer our readers to it, without extracting it. In the next note, 3, p. 6, (c) there is an observation which we do not think quite so well founded. *Bacon*, noticing what a use has been compared to, and also noticing this conceit of *Littleton*, that an use should amount to a tenancy, whereon a release should enure, says, it is controlled by 4 and 5 *H. VII.* and divers other books, which say, "that *cestui que use* is punishable in an action of trespass towards the feoffees; only 5 *H. V.* seemeth to be at some discord with other

books, where it is admitted for law, that if there be *cestui que use* of an advowson, and he be outlawed in a personal action, the king should have the presentment; which case Master *Ewens*, in the argument of *Chudleigh's* case, did seem to reconcile thus: where *cestui que use*, being outlawed, had presented in his own name, then the king should remove his incumbent; but no such thing can be collected upon that book; and therefore, I conceive the error grew upon this; that because it was generally thought that an use was but a pernancy of the profits, and then again, because the law is, that upon personal actions the king shall have the pernancy of profits, they took that to be one and the self same thing which *cestui que use* had, and which the king was entitled unto: which was not so; for the king had remedy in law for his pernancy of profits, but *cestui que use* had none." Upon this passage Mr. *Rowe* says, "the observation, that *cestui que use* had no remedy for his pernancy of profits, does not appear to be satisfactory, for if he had a title at law as tenant at will, he would have had a remedy for his pernancy of profits."

Now we, on the contrary, think this shews what *Bacon* cited it to prove, namely, that it is something different from the king's pernancy of profits, because no remedy lies for it at law; whence it follows also, as Mr. *Rowe* afterwards says, that it does not amount to a tenancy at will. And we think that *Bacon* did not take up this argument and make the above observation upon any supposition that it was a tenancy at will. The observation, admitting that he has no remedy at law, is satisfactory; and whether he had or not, must have been well known at the time when *Bacon* wrote. To grant that he had a remedy, would be conceding too much to those who support *Litleton's* doctrine; but as it is capable of proof, *Bacon* might well assume, that he had no such remedy, and then his argument is not inconclusive.

The following notes will serve to shew Mr. *Rowe's* critical acumen as a restorer of the text.

NOTE 15. p. 12. (t).

Quære who shall have the *subpæna*?—In the other editions it is said who shall have the *tand* for the lord shall not have the land—perhaps *Bacon* said who shall have the *subpæna* to have the land as it is in *Bro. Abr. feoff. al. uses* 34. for the court could not decide at once that *cestui que use* was entitled to the land, because the land was in the feoffees to uses; they could only



determine who was entitled to the *subpæna*, which was to be sure indirectly determining who shall have the land, since the person entitled to the *subpæna* could compel the feoffee to convey the land to him: however, in the case referred to, the question merely was, who should have the *subpæna*? See the *year book* of 5 Edw. IV. 7.

NOTE 16. p. 11, 12, 13, 20. (u).

The words *imitation* and *imitate* have been in several parts of the text substituted in the place of *limitation* and *limitate*, and the editor felt himself justified in doing so because the opinion which Lord Bacon controverts, is, that an use resembled or *imitated* the possession or land, for it is the conceit cited by Glanville in *Corbet's case* which he condemns, and by referring to that case in 1 *Rep.* 88. the reader will see that Glanville's observation was that the chancellor judged by *imitation* of the rules of the common law, and that the statutes in the reigns of Richard III. and Henry VII. had made uses to *imitate* and resemble estates in possession.

NOTE 17. p. 12. (v).

'The reason is not because the lord hath a tenant by title.'—In the last edition the passage reads thus, 'the reason is, [not] because the lord hath a *rent* by title; for that is nothing to the *subpæna* [but] because,' &c. the words *not* and *but* between brackets having been first (and it is conceived very properly) inserted in that edition: but with respect to the expression that the lord hath a *rent* by title, the present editor considers it an absurdity, there being no *rent* in the case; and in order to justify himself for the alteration which he has made in the text by substituting the word *tenant* in the place of *rent*, an alteration made under the conviction that it was necessary to express the author's meaning, he begs leave to submit the following remarks to the reader's consideration.—Lord Bacon is endeavouring to point out the true reason why the lord was not intitled to the *subpæna*.—In the case itself no reason was assigned. Now one reason why the lord should not have the *subpæna*, might have been, as Hale afterwards held, that a trust of inheritance was not forfeitable, for if it were, the lord would be in by escheat, which could not be but for want of a tenant, and in such cases the feoffees are tenants. *Att. Gen. v. Sir Geo. Sands. Hard.* 494, 495. That if it were otherwise there would be a double forfeiture of the same thing, viz. by the trustee and by the *cestui que trust*, which would be unreasonable and could not be (*ibid.* 489.) So it was said in the same case (page 491,) that the reason why a trust in fee was not, in a case in Croke, forfeited to the King by way of escheat, was, because that the King had a *tenant* in by title. Here then is the same expression used in speaking upon a similar question.

‘ Our author, however, attributes the lord’s want of title to the *subpœna*, to the circumstance, not of his having a tenant in by title, but of its never having been the intention of the feoffor to benefit the lord.—‘ The reason is, not that the lord hath a tenant by title ; for that is nothing to the *subpœna*, but because the feoffor’s intent was never to advance the lord,’ &c.

It is said in the former editions, the *feoffee’s* intent, and also in the fifth line below, the *feoffee’s* will, &c. but that it ought to be feoffor’s intent, will, &c. is too obvious to stand in need of any comment.”

On the note 15, p. 12,(t) above, we shall only observe, that those who are acquainted with the press, know that the manner in which errors occur is by dropping some words casually which are afterwards overlooked if the defect in the grammar is not most glaring ; and this is exactly such an error as we should attribute to a mistake in the press. It might, we think, therefore have been well restored ; “ who shall have [the *subpœna* to have] the land.” In the course of our labours, we often find that where the same word occurs in the same or the next line, the eye, in printing or writing from a copy, often mistakes the one for the other, and the intermediate words are dropped. This circumstance, trivial as it may appear to some, may amount to a sort of *canon* of conjectural criticism, and we think that the interpolation, “ *the subpœna to have,*” is therefore peculiarly happy. We shall not further increase the number of our extracts from this class of notes ; but there are many others which contain discussions of points arising in the text ; and, while some consist of arguments in support of *Bacon’s* conclusions, others controvert his positions, and there are others in which the opinions of modern writers are discussed. In *all* of these Mr. *Rowe* displays an abundant share of real and deep learning, and of close investigation of ancient authorities, which he applies in a manner worthy a commentator upon *Bacon* ; not by heaping cases and authorities and dry garbled extracts one upon another, but by drawing from them the substance, and applying it, with nice discrimination, to elucidate the matter in hand. He then puts the whole to the test of a severe logic, which he seems to wield in a powerful manner ; so that it is impossible to read his work and not to say that he is a most acute reasoner, a deep thinker, and a most skilful disputant. With a boldness of mind, he pos-

sesses great ingenuousness and he unfolds his arguments in so clear a method and in a style so simple and unaffected that the reader cannot fail to understand them and to feel their force immediately. Lest our readers may suspect that we speak the language of exaggerated praise or biased partiality, [and those who read note 33 p.20, (n) may perhaps be inclined to do this, from finding ourselves mentioned in a manner for which we are grateful, but yet which would never purchase from us a judgment which we did not really think to be just], we shall insert an extract or two: but we confess ourselves at a loss how to chuse, and perhaps the first that comes to hand will answer as well as any other.

*On the intent of the legislature in the statute of uses, whether to extirpate or merely to restrain them.*

NOTE 62. p. 39. (y).

"Whether it was the intention of the legislature utterly to abolish all conveyances to uses, was a disputed point in the time of Lord Bacon, and one upon which a difference of opinion exists at this day.—It was formerly a point of considerable moment, inasmuch as a very important question was governed by it, namely whether any uses should be preserved by the equity of the statute which otherwise would by the strict construction of its letter be destroyed?—Thus in *Chudleigh's* case Periam and Walmsley, who argued in favour of the contingent use, contended, that it was not the intention of the statute to extinguish or eradicate any uses (1 *Rep.* 132); whilst on the other hand, the eight justices and barons who argued against it, held, that the statute should not—against the express letter of it—be construed by equity for the preservation of contingent uses, (*ibid.* 138. 1 *And.* 135, 343, 344.) and indeed this resolution of the eight judges in *Chudleigh's* case may be regarded as a judicial acknowledgment that the intention of the statute was to root out the practice of making conveyances to uses, and notwithstanding the observations of Lord Bacon in this place against that conclusion it does really appear to the present editor to be warranted by the statute itself.

"The editor proposes to state in this note the arguments in favour of the opinion that it was the intention of the legislature in passing 27 Hen. VIII. c. 10. to extirpate the practice of making conveyances to uses, examining as he proceeds all that Lord Bacon has advanced which the view of lessening the force of those arguments; and in the next note to examine the arguments of Lord Bacon in support of the opposite doctrine.

Nº. 27.

[ Q ]

"The statute then, after stating that the evils of which it complains arose by reason of *fraudulent feoffments, fines, recoveries, and other like assurances to uses, confidences, and trusts*, goes on to say, that for the extirping and extinguishment of all such subtle practised feoffments, fines, recoveries, abuses and errors heretofore used and accustomed, &c.—*the estate of the feoffee shall be in cestui que use*.—Now, if the intention of the legislature is to be collected from its own positive expressions declaratory of what that intention was, the object which it aimed to attain was the *extirp- ing* of such subtle practised feoffments to uses theretofore used. Lord Bacon says, that the extirpation which the statute meant was plain to be of the feoffee's estate, and not to the form of conveyance; but this is saying that the intention of those who made the statute was not that which they themselves have in definite terms declared that it was—it is giving to plain and express words an exposition different from their clear literal import, and—*quoties in rebus nulla est ambiguitas ibi nulla expositio contra verba expressa fienda est*.

"Even if that intention had not been positively expressed, there would have been sufficient matter in the other parts of the preamble to justify a conclusion, that the legislature could not have intended that feoffments to uses should continue—feoffments, to which the epithet *fraudulent* is applied, as if to mark the odious light in which they were viewed. To suppose that the legislature meant to continue such feoffments, is to believe that it meant to countenance frauds.

"The words *heretofore used* also seem to admit of an inference of its having been expected, that the feoffments to uses which had been used before, would not be used after, the act.

"As all the benefit which *cestui que use* derived from the use, as well as all the mischief which the use occasioned to other persons, arose, in consequence of the use or equitable right to the profits being separate from the possession, it was perhaps expected by the makers of the statute, that the transferring of the possession to the use, and thereby blending them, would have had the effect of extirpating the practice of conveyances to uses, by taking away that temptation to the practice which existed when the use was distinct from the possession.

"By transferring the possession to the use, it was in fact rendering a feoffment to uses a nullity as to any advantage to be derived from the use; for if a feoffment after the statute had been made to A. to the use of B. by the operation of the statute it would have been the same thing as if a conveyance of the land had been made to B. in the first instance; for B. could not dispose of the use by will in this case, as he might have done before the statute, inasmuch as a devise of the use by reason of the possession's being united

with it, would have amounted to a devise of the land itself, and lands at the time of the statute were not devisable.

"Another consequence of uniting the possession and use, was, that if the *cestui que use* died, his heir within age, the lord would have had the wardship of the heir—the wife of *cestui que use* would have had dower, &c. &c. B. might therefore as well have taken a conveyance of the land to himself, as to a trustee to his use : and for the same reasons no one could have had any inducement to convey away the possession for the purpose of taking back the use to himself, seeing that the use, in consequence of the possession being united with it, would be subject to the same incidents of tenure, &c. as before the conveyance made ; and that *cestui que use* was then as incapable of devising the use as the land itself. A devise of the use, was in fact, after the statute, equivalent to a devise of the land, and therefore void. But it is conjectured, that a new mode of indirectly devising lands was struck out between the statutes of uses and wills by means of feoffments to the use of such persons as should be appointed by will ; thereby making the will a designation of the person to take the use, and not a devise of the use then vested in the testator ; but for this see infra note 80.

"Again—the words *abuses* and *errors* which are joined with the feoffments, &c. show strongly, that the statute meant to root out those feoffments, &c. and the *abuses* and *errors* to which they had given rise.—When the statute says that for the *extinguishment of such feoffments, abuses, and errors*—be such and such things enacted—is it to be supposed that the statute meant that those feoffments, abuses, and errors should continue ? Lord Bacon, in commenting upon these words says 'that may be an abuse of the law which is not against law'—admitted—but when the statute provides means for the avowed purpose of extinguishing such an abuse, is there not every reason to suppose that it was intended to prevent the future practice of it ?

"The 14th sect. of the act also furnishes a very strong reason for thinking that the statute meant to discountenance the practice of uses in future ; for it gives to the *cestui que use*, benefit of voucher, aid, prayer, &c. only where his estate should be executed within a year from the time of the statute, viz. until the 1st of May 1536, but not after. Now, if it had been intended to preserve the practice of uses, the same advantages would have been also given to such *celles que use* as should have their estates executed after that period.

"Upon the above grounds therefore it appears to the editor not unreasonable to conclude, that the intention of the legislature was (what the act itself says) the extirpation of those fraudulent feoffments to uses and the extinguishment of the abuses which existed

in consequence of those feoffments ; and that the way which they thought the fittest for such extirpation and extinguishment was the rendering such feoffments a nullity by annexing the possession to the use.—The subject will be continued in the next note.

NOTE 63. p. 39. (z).

“ In attempting to controvert arguments which Lord Bacon has pronounced unanswerable, the editor must be understood to speak with the utmost diffidence. In the preceding note it hath been contended, that the transferring the possession to the use was not the ultimate design of the legislature, but that they had a further object in view, viz. the extirpation of the practice of uses ; and that the blending the possession and use was the mean which they provided to promote that end, conceiving as all the mischief had arisen from the possession and use being separate, that uniting them would have the effect of putting an end to the practice, by rendering it unavailing, but to this doctrine our author is decidedly hostile.

“ The first argument advanced by him to prove that the statute meant not to suppress conveyances to uses, is—that *it hath in the very branch thereof words de futuro, ' that are seised or hereafter shall be seised.'* Now, without relying on the argument, that those words were inserted in regard of uses suspended by disseisins, they do not appear to me to authorise the opinion that the statute meant to continue uses ; for whatever might have been the object of the statute, those future words were most certainly necessary to perfect the means which the legislature had provided. If the act had merely said, ‘ where any person or persons *stand or be seised*’ it would have applied to conveyances to uses at the time of the act, but would not have extended to uses created after.—The only legitimate inference from the circumstance of the statute’s having words *de futuro*, in the humble apprehension of the editor, is, that it was foreseen by the legislature that uses would continue unless some such words were inserted, but not any such inference, as that the legislature expected that uses would continue or meant to countenance their continuance.

“ The second reason, ‘ that no hereditaments shall pass, &c. or any use thereof,’ is sufficient to show that at the time of the statute of enrolments it was thought that uses would continue in the case of bargains and sales, but not that there would be conveyances to uses after the statute ; nay, the presumption is, that it was not thought that uses would continue in other cases than bargains and sales, or they would have required an enrolment of all instruments whereby the use might pass. If they had thought that there would have been recoveries (for example) to uses, there would have been the same policy in requiring an enrolment of the deeds to lead the uses of those recoveries, for the purpose of

preventing a secret transfer of the land by a transfer of the use, as there was in requiring an enrolment of bargains and sales.

“ But ‘it will be asked, what reason could the legislature have had for supposing that uses would continue in the case of bargains and sales, and not in other cases? If the editor has taken an accurate survey of his subject, there was a sufficient reason, and it is this—that as it was probably thought that the annexing the possession to the use would render conveyances to uses nugatory, the practice of making feoffments, levying fines, and suffering recoveries, to uses, would fall to the ground; but with respect to bargains and sales at the time of the statute, the having of the use was not the primary object; on the contrary, the intention was, that the bargainee should have the land itself; but where by reason of any defect in the feoffment, or by the refusal of bargainor to make such feoffment according to his contract, the bargainee failed of having the land itself; in such cases the court of Chancery considered the bargainor, after payment of the purchase-money, as being seised to the use of the bargainee: the court of Chancery therefore, ruled by the same equitable motives, would, it might have been supposed by the legislature, continue to make the same construction in similar cases and to prevent the land from passing secretly in this way, an enrolment was directed.

“ The motives to the raising of uses were different in general cases, to what they were in the case of bargains and sales; for in general cases, by which is meant in cases of conveyances made to uses, the end and intent of those conveyances was, that the use might be disposed of distinct from the land; and that it might be free from those charges to which land was subject; but as these things could not be after the land was transferred to the use, it must have been reasonable to suppose, that, as the motive to the making those conveyances necessarily ceased, the practice would cease also; but in the case of bargains and sales, the court of Chancery gave the use to prevent an injury to the bargainee, and as the same equitable motives would continue, it was reasonable to suppose, that the construction of an use to the bargainee would continue.

“ The statute of enrolments, therefore, does not prove, that it was expected there would be conveyances to uses after the statute.

“ With respect to the third reason advanced by our author, and which is grounded upon the statutes speaking in one of the provisos of uses made and executed after the 1st May, 1536, the same remarks which were made on the first reason, apply with equal force here, that because they thought it possible that uses might continue, does not favour the opinion—and much less prove—that it was intended that they should continue, or that it was expected they would, for the legislature might have supposed the *possibility* of there being conveyances to uses after the statute, and yet have entertained an *expectation* that there would not be any such con-

veyances in consequence of their having by transferring uses into possession so altered the use as to have taken away every inducement to the practice. But Lord Bacon says, if they had had any such intent, the case being so general and so plain, they would have had words express 'that every limitation of use made after the statute should have been void.' This argument, which Lord Bacon seems to have considered the strongest, really does not appear to the editor to be a very forcible one; for where different means present themselves, which are likely to attain the end in view, does it necessarily follow, because the most prompt were not made choice of, that it was not intended to attain that end at all? or if such an inference could be drawn where the intention was dubious—could it be entertained in a case where it is said in positive terms, that the means were provided for the very purpose of carrying that intention into execution? And here the legislature says, that it is for the extirping and extinguishment of those fraudulent feoffments, &c. to uses and the abuses, and errors consequential thereupon, that it is about to enact that the estate, &c. of the feoffees shall be in *cestui que usc.*

"It is impossible to say positively, why the legislature preferred the joining the use and possession, in order to prevent the practice of conveyances to uses, rather than to declare uses at once void; but the editor will be allowed to observe, that the practice of uses was at the time of the statute prevalent throughout the kingdom; and it might therefore have been thought by those who planned the act, that the most likely way to make it pass, was, to make use of indirect rather than direct means: and perhaps the means which were provided, considered in every point of view, were the wisest; for if, as Lord Bacon suggests, the act had said, that every limitation of an use made after the statute should be void, it would have taken in uses of bargains and sales which arose from the equitable construction of the court of Chancery, and from motives the most pure; and uses upon bargains and sales, Lord Coke observes, they thought convenient to continue. 1 Rep. 125.

"Another reason why the makers of the act must have had objections to declare every limitation of uses which should be made after the statute void, is, that by a statute passed only four years before, viz. the 23 Hen. VIII. c. 10. such uses as those to parish churches, chapels, guilds, fraternities, &c. not being corporations, were made good, provided that such uses were not appointed to continue above the term of 20 years from their commencement.

"Now if they had said in the statute 27 H. VIII. that 'every limitation of use made after the statute should be void,' then the authority which had been so recently given by the stat. 23 H. VIII. of limiting such uses as are mentioned in that statute would have been taken away; but it is plain that the legislature did not mean to interfere with that class of uses, because the statute 27 Hen.



VIII. is so worded as only to have operation where there is a *person* seised to the use of another *person*, or a corporation, and in the case of 23 Hen. VIII. they are not so seised, but only to the use of a thing, work, or fraternity not incorporated.

"Viewing therefore the three reasons advanced by our author in the above light, the editor cannot but acquiesce in the sentiments of Coke, that it would be absurd to say that the makers of this act intended to preserve uses when they expressly say that they intended to extirpate and extinguish uses. See 1 Rep. 125.

NOTE 90. p. 47. (g).

"Notwithstanding Lord Bacon considered the doctrine of a *scintilla juris* but as a conceit, and the feoffees estate to be extinct, it has been established by the decision in *Chudleigh's* case, and the resolutions of Rolle and the other justices of the King's Bench in the case of *Wegg and Villers*, that where there are contingent or future uses limited, the estate of the feoffees is not utterly out of them; but, that they still have a possibility to serve the future use when it comes *in esse*;—that when the future use comes *in esse* they will have sufficient estate and seisin to serve the future use, (if the possession be not disturbed by disseisin or other means,) and,—that the feoffees have a possibility of entry or *scintilla juris*, as Dyer, (see *Dyer* 340, b.) called it, remaining in them; and in case of such disturbance of the possession and its not being recontinued, that they will have a power to enter and revive the contingent uses so that they may be executed by the statute of uses. (See 1 Rep. 129, 136, b. 137, a. and 2 Roll. 797. pl. 14, and 16.) And further, that where the revival of the uses depends upon the entry of the feoffees, there, if the feoffees release all their right in the land or make feoffment of the land or bar their entry by any other way, the contingent use never could be executed by the statute; but must for ever fail. See 1 Rep. 137, a. and 2 Roll. 797. pl. 16. and see also *Dyer* 340, a. as to the feoffees being barred of their entry by their feoffments by the opinions of Dyer, Manwood, and Mounson, against Harper.

"It should however be observed, that the necessity of an entry by the feoffees, where there has been a disseisin, hath been questioned by the late Mr. Ferne, in his truly excellent work on contingent remainders; but upon grounds which in the editor's opinion, are not calculated to shake that doctrine; for it seems to have been entirely out of that gentleman's view, that the statute of uses has not any operation, unless those *four* things concur at one and the same time, that is to say—1. Seisin in the feoffees.—2. *Cestui que use in rerum natura*.—3. *Ad use in esse*, and—4. that the estate of the feoffees may vest in *cestui que use*, 1 Rep. 126. But to understand the subject the better, let us suppose, that a feoffment is made to A. and B. to the use of C. for life, remain-

der to the use of the eldest son of C. in tail, he having no son at the time, remainder to the use of D. in fee; and then, that C. the tenant for life is disseised, afterwards has a son born, and then dies without having revested the seisin; Mr. Fearné contends, that in such a case the contingent in remainder in-use to the son of C. will take effect and be executed by the statute without any previous entry by A. and B. the feoffees to uses; but it admits of proof that the contingent use without such an entry never can be executed by the statute, because the statute only works where (in its own words) any person is seised to the use of another person: Now *before* the birth of the son of C. it is perfectly clear, that the use to that son could not be executed, for the feoffees were not seised to the use of that son, there being no such *person* in existence; at that time, the one of the four requisites which was wanting, was, a *cestui que use* in *rerum natura*; and, *after* the birth of the son it is equally clear, that the use to that son could not be executed, because the *seisin* which was to have reverted to the feoffees (see note 102,) had been previously divested, and the feoffee had consequently never been *seised* to that use; so that when the intended *cestui que use* was in *rerum natura*, another requisite to the operation of the statute was wanting, *viz.* seisin in the feoffees; and that seisin must necessarily continue to be wanting until it is revested by entry.

"There is no doubt but that the right of entry in C. was sufficient to support the contingent use to his son, so as to preserve its capacity of taking effect, provided there should afterwards be a seisin to that use; the case of *Wegg and Villiers*, above quoted, decided that point. The only question is, if the contingent use will be executed by the statute without such a seisin? In support of the affirmative of it, Mr. Fearné (*Fearné's Cont. Rem.* 445. 4th ed.) asks, does not the statute enact, that 'where any person, &c. is seised to the use of others, the *cestui que use* shall be deemed in lawful seisin, &c. to all intents, constructions, and purposes in the law?' And he asks also "if the words *to all intents, constructions, and purposes in the law* must not be referred to the legal properties, qualities, and capacities of estates of the like degree or measure at common law; If so, (he argues) as it is one of the legal qualities of an estate at common law of the degree or measure of freehold, to support a contingent remainder when turned to a right of entry, so will a proceeding vested use support a contingent use; and as one of the qualities of a contingent remainder at common law, is, a capacity of being supported by a right of entry, so will a right of entry alone without any entry by the feoffees preserve the capacity of the contingent use to vest and take effect.'—It is admitted by the editor, in answer to Mr. Fearné, that uses when executed by the statute, acquire the legal qualities of estates of the like degree or mea-

sure at common law; and consequently, that a right of entry in a person having a preceding vested use of the degree or measure of freehold, will support an use limited in contingency, so as to preserve its capacity of taking effect if there should afterwards be a seisin to that use: But it is at the same time denied, that the contingent use can vest and take effect without an entry by the feoffees, because the statute hath never executed the possession to that use for want of a *seisin* to it in the feoffees, and a *cestui que use* in *rerum natura* occurring at the same time; and as the statute hath never executed the possession to that use, the contingent use has never been in a situation to have the legal qualities, &c. of a contingent remainder at common law; for it is *only* where the statute hath carried the legal estate to the use, that an use can have those legal qualities, &c. If the son of C. had been born before the disseisin, the use to that son would have been immediately executed; and then, upon the death of C. the son might have entered, without any previous entry by the feoffees, in the same manner as a person to whom a contingent remainder at common law is given, may do; and the sole reason, why, a person having a contingent use cannot enter also, is, that as the disseisin in the case above supposed happened before the birth of the son, the statute has not—for want of a seisin in the feoffees—been able to execute the possession to that use, so as to clothe it with the legal qualities of an estate at common law.

The doctrine which Mr. Fearné opposed, was firmly established by the decision in *Chudleigh's* case, as the extracts from that case given in the former part of this note prove;—how then came it to pass, that Mr. Fearné in questioning the soundness of that doctrine, confined his strictures to the extrajudicial resolutions of the judges, in the case of *Wegg and Villers*, when there lay in this path a solemn adjudication in favour of it? The very ground of the conclusion of eight of the judges in *Chudleigh's* case, against the contingent use, was, that on account of the disseisin an entry by the feoffees was necessary, in order to give effect to that use; and that the feoffees barred having themselves of their entry in that case, the contingent use could never take effect.

This appears from Coke's report of the case, who, after stating the resolutions of the judges as cited above, sums up in the following words, "so all the justices and barons of the Exchequer, except Periam, Walmsley, and Gawdy, did conclude, that, forasmuch as the stat. 27 H. VIII. doth not extend but to uses *in esse*, and to persons *in esse*, and not to any uses which depend only in possibility, for that reason the contingent uses in the case at bar remain so long as they depend in possibility, only at the common law; and by consequence, they might be destroyed or discontinued before they came *in esse*, by all such means as uses might have

been discontinued or destroyed by the common law," 1 Rep. 137, b. Now, at the common law uses were discontinued where the seisin to the use was devested, and they could only be revived by the entry of the feoffees to regain that seisin; and if the feoffees barred themselves of their entry the uses were destroyed, because it would be impossible that they should ever be revived. See 1 Rep. 121, 122, and 126. and the authority there referred to.

It is evident, that Mr. Fearnie wholly misapprehended the principle of the decision in *Chudleigh's* case; for he attributes that decision to—the determination in law of the particular estate by forfeiture, before the birth of the son to whom the contingent use was limited; whereas, so far from deciding that point were the judges, that they were only agreed that the determination in fact of the particular estate by the death of the particular tenant, before the birth of the son, would have destroyed the contingent use, 1 Reports, 137, b. 138, a, but with respect to the determination in law of the particular estate before the birth of a son, only four of the judges expressed themselves of opinion, that a contingent use would be destroyed by such a determination of the particular estate, 1 Rep. 135, b. And only one of the four was governed by that opinion in his judgment, and the seven other judges instead of being of that opinion, were (according to Pollexfen, *Poll.* 389, and indeed from reasonable presumption furnished by the reports of the case) rather of the contrary opinion. And it is not to be wondered at, that seven of the judges did not accede to the opinions of the other four upon the last mentioned point, for when *Chudleigh's* case was argued, it was not taken for law, that the determination in law of the particular estate by forfeiture, would be a destruction of a contingent remainder even at common law, nor was it settled until a few years afterwards in *Archer's* case; for although *Archer's* case is reported by Coke before *Chudleigh's*, yet the latter was first adjudged. See *Poll.* 389, 390. But whatever may have been the sentiments of the judges upon the destruction of a contingent use by the determination in law of the particular estate, certain it is, that it was not adjudged as Mr. Fearnie thought, nor made a point in the case; for Coke distinctly tells us, that "the question in the case was no other, but whether the contingent uses before their existence by the said feoffment of the feoffees, were destroyed and subverted, so that they should never arise out of the estate of the feoffees after the birth of the issues." See 1 Rep. 121.

We must now conclude; we have extended our account to a considerable length, but the importance of the subject and the great name of its venerable author, whose chief legal remains this reading may be considered, de-

mands that we should pay to it particular attention. We have perused the whole of this edition with great pleasure, and we willingly bear this testimony to Mr. Rowe, that our admiration of *Bacon* is perhaps increased by thus viewing him, as it were, through a more favourable medium, for he has cleared up to us many obscurities and made many difficulties plain: and as there are few who would now read *Coke's first Institutes*, without the late valuable commentary, so we trust there will be no student who is tempted, as doubtless all will be, by the great name of *Bacon* to study his *reading on uses*, who will not be thankful to Mr. Rowe for the assistance he has afforded.



*On a Passage in Mr. Cruise's Treatise on Fines concerning Dower.*

AS the point which is the subject of this communication is not of a *practical*, but *speculative* nature, I trust you will oblige a constant reader by inserting it in the next number of your valuable publication.

Mr. Cruise, in his able *Treatise on Fines*, 2d edit. p. 69, states the ground of the wife of the cognizee in a fine, *sur done grant et render*, not being entitled to dower to be, because he has a seisin only for an instant; but this I apprehend is not the true reason. He is unquestionably seised, as is evident from the case adduced by Mr. C. himself, and the law makes no distinction whatever on this subject, between a seisin for a moment and any long period. Dower, according to the definition of *Littleton*, *Coke*, *Blackstone*, and all other writers of eminence, is an estate for life which the law gives the widow in the third part of the lands, tenements, and hereditaments of which the husband was solely seised, at any time, during the coverture, of an estate of fee, or in tail in possession, and to which the issue of the widow by such husband might by possibility have inherited. It is therefore clear that if there is an actual seisin for any period of time, the wife will be entitled to her dower, provided the other essentials occur.

The true ground of the exclusion of dower I take to be this—the law regards the cognizee in the light of a *trustee*; he is seised, it is true, but he is seised only for the purpose of *rendering back*, and the wife is not dowerable of a trust estate.

T. R.

### *Errata in A.'s Communication on Dower.*

#### TO THE EDITOR OF THE LAW JOURNAL.

SIR, In your last Number you had the goodness to insert the greater part of the remarks I sent you, "on the best Method of barring Dower;" I will thank you to make the following corrections—

p. 83 for "B—r's method," read "B—n's method."

p. 83, for "the estate and intent of the trustee," read "the estate and interest of the trustee."

p. 85, for "take place out of the estate," read "take place of the estate."

p. 86, for "determining," read "determination."

p. 87, for "without any impeachment," read "without impeachment."

p. 88, after the words, "paramount the claims of the wife," should be inserted an asterisk, referring to the note.

I am, Sir, your most humble servant,

16th March, 1805.

A.

For these mistakes, we hope we shall be excused, when our readers consider the difficulties under which all editors of periodical publications must necessarily labour, when they have to decypher the various hands of their correspondents. Those who favour us with their compositions will confer on us a further obligation if they will take care to have them copied so fair as to prevent all possibility of mistake.

#### TO CORRESPONDENTS.

*Causidicus* is informed that we have not yet perused both the pamphlets to which he alludes, and as the subject of them is rather political, we are in doubt whether we shall give any account of them.

M. C. will excuse us for having given the preference to communications upon subjects entirely new, instead of his *rejoinder* to R. R.'s *replication*. After the observations of *Students* upon the same subject, he may probably wish to make some alterations to his letter; if so, he will find it at our publishers, at any time before the 15th instant, when the next number will go to press.

As some of our readers may not be acquainted with the cause of the delay in the publication of our present number so long beyond the usual time, we inform them that at a meeting of the proprietors and publishers of monthly publications, held at the Chapter Coffee House, March 29, 1805, *J. Nichols* in the chair, it was unanimously resolved, that in consequence of the disputes in the printing business, the monthly works intended for publication on the 1st of April, should be postponed to Tuesday the 9th.

*On the Discontinuance of an Estate-tail; and the Operation of a Fine; comprised in some Observations on the following Passage in Cruise's Treatise on Fines.*

“BEFORE we quit this subject, it may be proper to observe, that the operation of a fine is merely to bar the estate tail, but not the remainders or reversion which depend upon it; for a fine levied by a tenant in tail in possession only discontinues the estate tail, and gives the cognizee a base fee, that is, an estate to him and his heirs, as long as the tenant in tail has heirs of his body, but does not bar the rights of the persons in remainder and reversion.

“But where the tenant in tail has the immediate reversion in fee in himself, he may make a good title by fine only; for in that case the operation of the fine will be to *merge* the estate-tail, and bring the reversion in fee into immediate possession, it being determined that a fine takes away the protection given to estates-tail by the statute *de donis*, and they then, like all other particular estates, become subject to *merger* and *extinguishment* when united with the absolute fee.\*

“This method, however, of barring an estate-tail, is attended with one considerable inconvenience, which will be mentioned in a subsequent chapter.” *Cruise on Fines*, 2d Edit. 1786, p. 176.

The operation of a fine levied by a tenant in tail, who has the immediate reversion in fee in himself, is to *merge* the estate-tail, and bring the *reversion in fee* into immediate possession, by which means it will become liable to the incumbrances of all those who were seised of it. So that, if a tenant in tail with the immediate reversion in fee in himself, makes a lease, acknowledges a judgment, or incumbers his estate in any other manner, and his heir levies a fine, it will operate as a confirmation of the lease or judgment. *Ibid.* p. 274.

Sir, As you were pleased to insert the *observations* which I sent you on Mr. *Cruise's Treatise on Fines*, I have been

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\* 1 *Shew.* 370. 1 *Salk.* 338. 4 *Mod.* 1.

2d. 28.

[ 3 ]

induced to offer you my sentiments on another passage of that work.

The statement in p. 176, that an estate-tail will *merge* in the reversion in fee, is certainly *incorrect*. It is a base *fee-simple* that *merges*, but the *estate-tail* is *discontinued*.

In order to place the doctrine in a clear point of view, it may not be amiss to state, very briefly, the history of estates-tail.

At the common law an *estate-tail* was a *conditional fee* restrained to some particular heirs, exclusive of others, as "to the heirs of a man's body;" to "his heirs male;" "his heirs female," &c. It was called a conditional fee, from the condition, either expressed or implied, that if there was no heir of the description mentioned in the gift, the land should revert to the *donor*; but, on the birth of the issue of the given description, the estate of the *donee* would have been discharged from the condition, which was then performed, and he would have had an *estate in fee-simple absolutely*, and he might have aliened and have exercised any act of ownership over it. However, if the *tenant* did not alien, and there happened at any time afterwards to be a failure of heirs of the description mentioned in the gift, the estate would have determined, and the lands reverted back to the donor. Thus, if an estate was given to a man and the heirs male of his body, the moment he had a son born, he was owner of the estates in fee-simple to all intents and purposes.

The condition on which he should have a fee, namely, his having an heir male, was performed by the birth of a son, and he might then have aliened his property; but, if he neglected so to do, and his son died in his life-time it would not descend to his daughter or heir general; because the particular heirs of the *donee* to whom it was the *donor's* intention that the land should go, were extinct. Hence arose the practice of the *donee's* conveying the estate, on the birth of the issue of the given description, and taking back a new estate, by which method the descent would be to the heirs general. Thus stood the common law, when the nobility, who were anxious to preserve their large possessions in their families, procured the statute *de donis*; 13 Edward I. c. 1; which directed that the will of the *donor* should be observed, so that the *donee* should have no power to alien the land so given, but that



it should remain to the issue of him to whom it was so given, after his death, or should revert unto the giver or his heirs if issue failed. The construction put on this statute was, that the estate so given to the *donee* was a particular estate. The great inconveniences which ensued from this statute gave rise to a fiction of law called a *common recovery*, by which the *tenant in tail* was enabled to make a conveyance of the *fee-simple* of the lands, as effectually as he could have done before the statute *de donis*. The restrictions of alienation by *tenant in tail* were, however, still further curtailed in the reigns of R. III. Henry VII. and Henry VIII. by certain statutes, whereby a fine levied by a tenant in tail is declared to be a good bar to him and his heirs, and all other persons claiming under such intail.\*

This is a very brief and incomplete *history* of estates-tail down to this period, but sufficient for the purpose of shewing in what manner a fine will operate on it at this day.

As tenant in tail was complete *owner* of the estate at *common law*, after the fulfilment of the condition, namely, the birth of issue of the description mentioned in the gift, it follows that he might, at that period, have lawfully aliened it by fine, as well as by any other mode of assurance. After the statute *de donis* passed, he could not lawfully convey more than an estate for his life, but if he levied a fine of the estate, or made a conveyance by certain other modes of assurance, as by *feoffment*, a fee by *wrong* would pass, on account of the forcible operation of these assurances, and the estate-tail would have been suspended, or, as it is technically called, would have been *discontinued*. This was foreseen by the legislature at the time when the statute *de donis* was passed, and accordingly a remedy was given to the issue, &c. by that statute, to recontinue or revive it. This power of restoring the estate, by issue in tail, was taken away in the case of an assurance by fine by the statutes of R. III. &c. as before mentioned. From the above observations, it will appear that a fine at this day will operate in two ways, both to pass an estate and to bar a right. First, it passes a *wrongful fee* and creates a discontinuance of the estate-tail; and secondly, it deprives the issue in tail of the right of reviving that estate.

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\* *Black. Com.* vol. 2, c. 7, p. 116.

When therefore a fine is levied by tenant in tail, with immediate reversion or remainder to himself in fee, it passes a *base* or *wrongful* fee, and not an *estate tail*, as asserted by Mr. Cruise; for that estate is *discontinued*, and a *rightful* fee from the reversion or remainder in fee is created; and, as two fees cannot subsist in the same person, the *base fee* will *merge* in the other.

It ought to be observed that a fine under those circumstances ought never to be adopted without great caution, for the reasons mentioned by Mr. Cruise.

I hope the above observations are not unintelligible, but the apprehension of being too late for the next number of the *Law Journal* prevented me from putting my ideas on the subject in that order which I otherwise should have done.

April, 1805.

J. R.



*Observations by M. G. on R. R.'s Reply.*

SIR,  
I REQUEST you will do me the favour to insert a rejoinder to the reply of Mr. R. R. contained in the XIIIth Number of the *LAW JOURNAL, New Series*.

The observations in my last *communication* have been styled *luminous* and *erudite*.\* I never had the vanity to suppose that any observation of mine would have thrown much new light on a subject which Lord Mansfield, and the most eminent men in the profession, had endeavoured to elucidate. My object was chiefly to put the case of *Zouch v. Parsons* in what I then conceived and still do conceive to be its true light; and though I have been so unhappy as to have excited Mr. R.'s displeasure, yet I flatter myself that my endeavour has not been entirely fruitless. It has paved the way to a very useful discussion, on a subject which is highly interesting and of great moment to the profession, and has induced a gentleman, who has given a great specimen of

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\* *Vide Law Journal*, 1805, p. 53.

ingenuity, ability, and learning, to turn his mind to the subject, and his *essays*, I am convinced, will be of essential service to the profession.

The reader would doubtless expect from the person himself who expressed so much contempt for the light afforded by his antagonist something very brilliant; that he would come forth with the splendor of the sun, at whose light all the other luminaries would vanish. What then must have been his disappointment to find that the light which he affords is merely a *saint reflection*, and that the observations he makes are taken from other works, but somewhat altered, perhaps as gipsies who have stolen children disfigure them to make them pass for their own.

I have been charged with *persevering* in error merely from an unwillingness to acknowledge it; I will with confidence wait the judgment of the judicious reader, whether this observation can with justice be applied to me. But I retort the charge: I do accuse Mr. R. of *wilful* and *obstinate* perseverance in *error*. Whence that irritation of mind, under which he laboured when writing his reply, which evidently appears from "the eyes of my intellect"\* and other *expressions* equally polite and elegant? whence that shrinking from the contest? It is attributed, indeed, to the writer's *engagement*, but this is the *common* resort of defeated argument—a trick so palpable and stale as not to impose on a school boy. Can any man's engagements, however pressing and important, prevent him from answering arguments on a subject of this nature if he can answer them? Observations, too, which are so *luminous* and *crudite*. Whence is Mr. *Hargrave's* note cited to prove that it was the idea of that *eminent* conveyancer that it was not decided in the case of *Zouch v. Parsons*, that the infant was bound for ever?† Mr. H. states the position that the surrender or partitions of infants are void, and cites *Hale's* M.S. &c. for authorities; but he adds, in the case of *Zouch v. Parsons*, Lord Mansfield was of opinion that the surrender of infants, if by deed, is *voidable only*, and that in that case, it was necessary to consider the grounds of the acts of infants being voidable, &c. but there is not one word indicative of an opinion that the conveyance in that case by the infant was voidable. He only states

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\* *Law Journal*, 1805, p. 54.

† *Ibid.* 54.

so much of that case as had any bearing on the position under consideration by him. The question, whether an *infant mortgagee* was bound by *lease and release*, was not considered by him, because it did not concern that position. Whence the assertion, that a just inference arises that the court would have been of opinion that the solemnity of the instrument would not have been sufficient, if there had not been a semblance of benefit, when the court declared their approbation of the law in regard to the solemnity of instruments as laid down by *Perkins*, which is as follows: "all such gifts, grants, or deeds, made by an infant, which do not take effect by delivery of his hand, are void; but all gifts, grants, or deeds, made by infants by matter in deed or writing, which do take effect by delivery of his hand, are voidable by himself, by his heirs, and by those who have his estate?" Whence does it happen that Mr. R. has not urged one argument in favour of his construction of *Zouch v. Parsons*? Whence all this, but from a conviction, that that construction could not be supported, and from a wilful and obstinate perseverance in his opinion notwithstanding that conviction?

"The man convinced against his will

"Is of the same opinion still."

An error in judgment has been imputed to be in collecting from *Kctsey's* case, that the disadvantageous purchases of infants are void.\* As the decision in that case was very short, I will transcribe it: "But the court held it to be voidable only at his election, for if it were for his benefit, it shall be no ways void; but the infant, at his election, may make it void, by refusing and waiving the land before the rent day comes, for then no action of debt will lie against him: but in the principal case, it was not shewn that the rent was of greater value, and the defendant was of age before the rent day came, therefore," &c. Now is it not evident from the expression, "if it (a lease) were for his benefit, it shall be no ways void," that, if the lease had been to his disadvantage, the court would have been of opinion that it was void? And, as the reason assigned by the court, that the lease in the princi-

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\* *Law Journal*, 1805, p. 53.

pal case was not void, was, because "it was not *shown* that the rent was of greater value," can it be denied, that, if such proof had been adduced, the decision would have been that the lease was void? This case, therefore, is, undoubtedly, an authority that the disadvantageous purchases of infants are void. The *author of the View* says something about *decisions*; but *Ketsey's* case was referred to by M. G. as *authority* only, and not for an actual decision.

The author of *the Succinct View* endeavours to defend himself from inconsistency, by saying that he meant that a bare authority, which an infant is intrusted by law to exercise, is an exception to the rule, that the deeds of minors, when there is no appearance or semblance of benefit to them, are void.\* As it was not *expressed* to be an *exception*, I was justified in supposing, before it was explained, that it was not so meant; especially as there is not any *such* rule "that the deeds of minors, when there is not any appearance or semblance of benefit to them are void;" for the *cases* of *authority*, &c. do not come within the reason of the privilege given to infants, *which is to protect them from wrong*.

The author of *the View* states,† that it gave him pleasure to find that I had recreated my mind with a legal *sylogism*. I assure him it gave me no less pleasure to find, that in perusing his *communication*, after having for a long time travelled on *beaten tracks*, he has, at last, made a *discovery*. It had always been understood that two at least were necessary to make a contract; that there must be a concurrence of two minds: but this *Columbus* of the law has discovered that *A. alone is competent to contract*!!! this, however, is a subject of too much importance to be passed over lightly. Mr. R. has attempted to prove, from a *passage urged for the appellant*, in the case of *Drury v. Drury*, that the consent of the intended wife is not essential to a jointure.‡ I have been censured, in the strongest terms, for citing *Ketsey's* case as an *authority*, because there was not any *express decision* on the point contended for, and yet *arguments* of counsel are considered as law. But there is in fact not one syllable, in the passage alluded to, to warrant the inference that

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\* *Ibid.* p. 54.

† *Ibid.* p. 55.

‡ *Ibid.* p. 55.

the consent of the intended wife is not necessary to make a good jointure. Indeed they could not make any such assertion, without being as totally regardless of consistency as the author of the View himself; for in another part of the argument they state, "the legislature, therefore, intended that all women capable of contracting marriage should be bound by jointures made before marriage, which are presumed to be settled by the advice of parents, guardians, and friends, or, if made only with their own consent, by the husband, *fairly* and without *fraud*; still it was thought reasonable that she whom they allowed to bind herself by the marriage, which is the principal *contract*, should be bound by a *provision*, which is *accessory* to that *contract*, and a *condition* of it." Hence it is obvious *they* thought the *consent* of the woman was necessary to a *jointure*. I do not mean to contend, that, after a jointure is once made, the woman, if a *minor*, might waive it, on attaining 21. In so doing, I should have as little pretensions to consistency as Mr. R. himself; for I should then furnish an argument against the binding acts of infants; but I contend that the *consent* of *every woman*, whether minor or adult, is *indispensably* necessary to the *making* of a *jointure*; for no person can be *forced* to take any provision *volens volens*, but must *consent* either *impliedly* or *expressly*. The wife, then, either *did* or *did not consent* to the provision made by the husband; if she *did not* consent, there is no jointure; and if she *did* consent, it is a contract. The legislature, at the time of passing the statute of *uses*, evidently meant that the consent of the wife should be necessary to the making a good jointure. For it has inserted a *provision* that jointures, made *after marriage*, may be waived by the wife. And it appears that it was inserted from a foresight that the husband might compel the wife to give her *consent* to the provision. If the *consent* of the woman was not necessary, why insert that provision? It could not answer any *other* purpose than to guard against the *undue influence* which the husband might employ to make his wife *consent* to the provision, after marriage. Before marriage no such undue influence could be apprehended. Let us look, too, to the *consequence* of enabling the husband to defeat his wife of her dower, by making a provision on her, without her *consent*. If a man possessing *estates* of the value of 10,000*l.* *per annum* enters into a *contract* for marriage;

and obtains the whole of the wife's fortune, under the idea that she will have her *dower* out of his estates; then to deprive her of her *dower*, it is only necessary for him *secretly* to make a provision of 20s. per annum on her, in lieu of *dower*, by which means her own property will be entirely *lost*, and, in lieu thereof, she will receive 20s. per annum !!! There is another strong circumstance in favour of my argument, I mean the practice of the profession. And I would ask Mr. R. if he ever, in the course of his practice, saw a settlement by which a jointure is made on the wife, in which there is not a clause to this or a similar effect: "and it is hereby declared that the provision made for the wife is, and she doth *hereby agree to accept and take the same* in lieu of *dower*." Upon the whole, therefore, nothing can be more clear than that the *consent* of the wife is necessary to the making a good jointure, and that a good jointure is a *contract* between the wife and husband.

M. G.

*A BRIEF INQUIRY concerning the Origin, Progress, and Impolicy of taxing Attornies; including Remarks on a Regulation, ascribed to a Suggestion from the late Right Hon. LLOYD LORD KENYON. By CHARLES ISLEY, of New Inn. Brooke and Clarke, Bell-yard, Temple-Bar. 1804.*

*A DEFENCE of ATTORNIES, with Reasons for thinking that no ATTORNEY who duly considers the present critical situation of his country, or who has at heart the increasing respectability of the profession, will object to be taxed. In Reply to a Pamphlet lately published by Mr. CHARLES ISLEY, of New Inn, entitled a brief Inquiry concerning the Origin, Progress, and Impolicy of taxing Attornies, &c. To which are added, a few Remarks in vindication of two respectable Barristers against the illiberal attack of that writer. By a Friend to the Profession. Bickerstaffe. 1804.*

AT the end of our last *Number*, we noticed that our attention had been drawn to the above works, by a correspondent. We feared, that, in examining pamphlets of this kind, we might be involved in the consideration of questions of politics of a temporary nature, and perhaps also,

connected with the spirit of party, which it has ever been our wish to avoid. Had it been necessary that in undertaking a review of any work we should enter into the discussion of the merits of any particular set of men conspicuous in the service of their country, either as ministers, or as members of a *constitutional* opposition in *parliament*, we should have imposed upon ourselves profound silence: for all such discussions are foreign from the nature of our work; the object of which is Law, as a practical science. However, in this case, there is no fear that we should incur any danger of diverting our attention from its proper object: the disputants are attornies, who pretty peaceably discuss the merits of a tax, which we thought had been submitted to with great resignation and acquiesced in, even without a murmur, by a very great majority of a very numerous profession.

Mr. *Ilsey*, in his remarks on the *origin* of the tax, states, that it was adopted shortly after the shop-tax, in order to supply a deficiency which arose from some alteration at the time in the amount of that tax. It is well known that the *shop tax*, which he calls in some sort the parent of the tax upon attornies' certificates, was some time after repealed upon petition to parliament; and Mr. *Ilsey* regrets that the same spirit of opposition which animated the *shopkeepers*, did not also inspire the attornies, to join in obtaining, by every constitutional exertion in their power, the repeal of a tax which was alike grievous, unequal, and oppressive with respect to them. A spirit from which he thinks we have derived "the great charter, the (suspended) *Habeas Corpus act*, the bill of rights." "Hence" he says "also all other fences and barriers which tend to preserve the best birth-right of the subject." "For right will, in general supersede wrong, if it be *unremittingly* sought after!!" The consequence of the *patient* submission of the attornies, he says, was an increase of their burthens, under the pretext that it was required by some of the most respectable attornies, as the means of regulating the profession, and preventing indigent and necessitous persons from becoming members of it. Mr. I. then proceeds to consider the tax, "*first*, as the produce of the tax regards the benefit of the revenue; *secondly*, as tending to an useful regulation; and *thirdly*, to gratify resentment." But this division of his subject is not very clearly



pursued, and we collect from rather a loose and ill arranged discussion, that he thinks the attorneys hardly dealt by in being taxed, in respect of their profession ; because their gains are very small, being, *on the average*, 200*l. a year*, their expenditure in business is very great, and the difficulties of their profession are such that, according to the author of the *Wealth of Nations*, not one in twenty who are bred to it is capable of pursuing it.\* He contends that as a matter of regulation, it is wholly *ineffectual*; in which we agree with him ; and that it is the *less necessary*, because of the controul which the superior courts exercise over the attorney as one of their officers. Towards the conclusion, he *vaguely* insinuates, that it must have originated in *resentment* ; and where he speaks of the great difficulty of attaining *skill* enough to get a living in the profession, he talks rather largely about certain ancient writers on the law, such as *Glanvil, Bracton, Fleta, &c.* together with the *year books*, of which he thinks it necessary for an attorney to know something, instead of being contented to take all his knowledge of the ancient law from *Lord Coke*. In doing this he rather awkwardly stumbles upon a misconception, and, consequently, a censure of one of the editors of his commentary on *Littleton* ; for which he has been severely handled by his antagonist, and it can hardly be necessary for us to *defend* the gentleman who is the subject of his critique ; but we cannot help adding that we think there is more of the *parade* of learning in this part of Mr. I.'s pamphlet than is necessary. Into the dispute with Mr. *Watkins*, at the end of the work, we shall not now enter ; but we cannot help thinking that the passage alluded to by Mr. I. is *very* intemperate ; and perhaps the truth is that *Lord Coke* was correct when he said that *estates-tail* were by virtue of the *statute de donis* ; for though the limitation " to a man, and the heirs of his body," was previously in use, yet it conferred a *very* different sort of interest, namely, a *conditional fee*.

The writer of the *Defence* attacks Mr. I. on all points, without *mercy* ; he treats him with contempt ; and he stigmatizes him almost as a *sans culotte*, for saying, with

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\* We believe this was applied by *Adam Smith* rather to barristers than attorneys.

some *ifs* and *buts*; "Is it not obvious, if individuals are taxed more than their means will support, that, without the firmest resolution, they are pushed upon expedients at which the mind would otherwise recoil?" He seems to consider this like the cry of the Jews under Jeroboam, "to your tents, O Israel!" and, therefore, justly reprobates it. We hope and believe Mr. I. never intended it to be so; and perhaps he only meant that the attornies in a nation of shopkeepers, should imitate the shopkeepers, form a law association without arms, and petition. But the friend to the profession, perhaps because he could not directly understand it, and we confess we are in that predicament, was determined to make something of it, and cried with *Hamlet*, "tis michin malicho, it means mischief."

This writer is very happy in his ridicule of the opinion stated above, that the average of an attorney's profits is about 200*l.* a year, and begs his readers to look at the houses of the attornies in and out of London, and to see whether they are very abstemious in their living. He puts us in mind of a saying which we learned from one who was, like *Horace's father*, *abnormis sapiens*, "If you go through a country town you will always see three good substantial houses, the best in the town, for the lord of the manor lives on a hill near it, and those three houses belong to the lawyer, the doctor, and the parson."

In answer to the main object of Mr. I.'s work, he says, "The writer asks in his preface, 'Why not endeavour to remove the hardship?' My answer will contain the substance of what may be fairly concluded, from the silence of the profession as a body, that we do not, *all things considered*, regard the tax as a hardship." This we think is the best answer that can be given; for we believe upon principle it is not the most equitable nor the most politic of our taxes, especially since the income tax; but it is not intolerable, and some taxes or other must be paid.

We shall leave the merits of these two combatants to be decided by our readers, and shall only add, that the author of the latter pamphlet, who has endeavoured to conciliate us by a short encomium on our reviews, notwithstanding an enormously long and confused sentence at the beginning of his *Defence*, writes with by much the most force, spirit, and precision.

## BANKRUPTS,

*Declared in the London Gazette, from March 2 to 30.*

[The Solicitors' Names, and Dates of the Gazette, are preceded by a Crotchet.]

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- Arlidge Samuel, of Whitton, Northamptonshire, brickmaker. [Shaw, Dyer's buildings, Holborn. March 5.
- Arton Robert, of York, linen draper. [Hearon, York. March 16.
- Ailen William, of King's road, Holborn, coach maker. [Williams, Cursitor street, Chancery lane. March 23.
- Aveline James, of Ross, Herefordshire, grocer. [Hooper, Ross. March 23.
- Astbury J. of Sheffield street, Clare market, carpenter. [Jennings and Collier, Lincoln's Inn. March 26.
- Blizard Charles, of Fenchurch street, wine merchant. [Robinson and Lee, Lincoln's Inn, New square. March 2.
- Bertrum Alexander, of Nightingale lane, Middlesex, colourman. [Williams and Sherwood, Bank street, Cornhill. March 2.
- Binns William, of Wakefield, Yorkshire, bricklayer. [Carr, Wakefield. March 2.
- Bishop Benjamin, of Clement's Inn, Middlesex, money scrivener. [Russen, Crown court, Aldersgate street. March 2.
- Brewis James, of Southwick, Durham, ship builder. [Davidson, Bishop Wearmouth. March 5.
- Boyse Simonds Woodcock, of Great Yarmouth, merchant. [Clowes, Great Yarmouth. March 9.
- Barker John, of Yoxford, Suffolk, shopkeeper. [Mitchell, Saxmundham, Suffolk. March 12.
- Bedwell Charles, of Brick lane, Christ Church, Middlesex, victualler. [Windus, Son, and Holloway, Southampton buildings, Chancery lane, London. March 16.
- Burch John, of Liverpool, liquor merchant. [Statham and Son, Liverpool. March 16.
- Blackwell Thomas, of Chertsey, Surrey, grocer. [West, Charterhouse street. March 19.
- Briggs James, of Pilkington, Lancashire, nankeen manufacturer. [Kearsley and Cardwell Manchester. March 23.
- Braden William, of Polperro, Cornwall, shopkeeper. [Swayne, Bristol. March 23.
- Blakiston Robert, of Bishop Wearmouth, Durham, common brewer. [Laws, Sunderland. March 23.
- Burlingham, J. of Old Beckenham, Norfolk, miller. [Tilbury and Bedford, Bedford Row. March 26.
- Cheesman Henry, of Lamberhurst, Kent, corn dealer. [Jones, Tonbridge Wells. March 2.

## *Bankrupts.*

Crosbie John, of Liverpool, master and mariner. [Stanistreet and Eden, Liverpool. March 9.  
Clare Richard, of Midhurst, Sussex, money scrivener. [Broad, Union street, Southwark. March 9.  
Clarkson Thomas, of Kingsbury, Warwickshire, dealer in coals. [Whately, Birmingham. March 30.  
Coleman James, of Clare market, poulterer. [Bolton, Savage, and Spike, Elm court, Temple. March 3c.

Davis Edward, of Lambeth, brewer. [Bigg, Hatton garden. March 9.  
Driver Thomas, of Burnley, Lancaster, grocer. [Millner, Preston. March 9.  
Ducks William, of Lowestoff, Suffolk, tallow chandler. [Cory, jun. Great Yarmouth. March 12.  
Davis Edward and William Philips, of Church street, Lambeth, brewers. [Taylor Old street road. March 19.  
Donovan T. of Holloway, Islington, cowkeeper. [Holloway, Chancery lane. March 26.

Fromings John, of Horsmonden, Kent, victualler. [Lee, Crown court, Southwark. March 2.  
Fox, B. of Cough square, merchant. [Meredith and Robins, Gray's Inn. March 26.  
Fits James, of Codford St. Petet, Wiltshire, shopkeeper. [Tianey, Salisbury. March 30.

Green Michael and Henry Collins Green, of Oxford street, pocket book and trunk makers. [Aillingham, St. John's square. March 9.  
Geary Thomas, Austin Friars, merchant. [Druce, Billiter square, Fenchurch street. March 9.  
Gray James, of Monk Wearmouth, county of Durham, ship owner. [Blakiston, Symond's Inn, Chancery lane. March 16.  
Grayson William and Philip Shires, of Southwark, Surrey, hop and seed merchants. [Clutton, Union street, Southwark. March 23.  
Groom G. of Blackman street, Southwark, haberdasher. [Parnell, Spitalfields. March 26.

Hill Alexander, of Falmouth, mariner. [Tippet, Falmouth. March 2.  
Hayes James, of Liverpool, butcher. [Woods, Lord street, Liverpool. March 2.  
Hawthorn John the younger, of Wirksworth, Derbyshire, linen draper. [Clough, Manchester. March 9.  
Harding Thomas of Bolton, Lancaster, Linen draper. [Boardman, Bolton. March 16.

Johnson Richard, of Tokenhouse yard, merchant. [Bousfield, Bouverie street. March 5.  
Jenkins John, of Manchester, common brewer. [Clough, Manchester. March 9.  
Jackson Robert, of West Winch, Norfolk, butcher. [Goodwin, King's Lynn. March 30.

Kitchen Joseph, of Ipswich, Suffolk, grocer. [Dann Broad street, London. March 12.  
Kinge John Hen. of Paul's Chain, Doctor's Commons, furrier. [Smith and Tilson, Chapter house, St. Paul's Church yard. [March 29.

## *Bankrupts.*

- Lipscombe George, of Birmingham, chymist and surgeon. [Burris, Birmingham. March 2.
- Law Thomas, of Lancaster, merchant. [Mason, Wilson, and Jenkinson, Lancaster. March 9.
- Lewis William of Tredegar Ironworks, Monmouth, shopkeeper. [Stephens, Bristol. March 12.
- Lord John, of Eke, Suffolk, grocer. [Goss, Ipswich. March 16.
- Lowton Edward, of Red Lion street, Southwark, hop and seed merchant. [Clutton, Union street, Southwark. March 19.
- Longstaff Willingham, of Morton, Lincolnshire, corn factor. [Duckle, Gainsburgh. March 30.
- Maitland William, of Chancery lane, linen draper. [Pringle and Wasbrough, Greville street. March 9.
- M'Garry, Michael of Cooper's court, Upper East Smithfield, victualler. [Gill, Sherborne lane. March 9.
- Margetts J. of Maiden lane, Battle bridge, chymist. [Taylor, Mortimer street, Cavendish square. March 16.
- Moylo T. of Newcastle under Lyme, draper. [Wilson, Temple. March 26.
- Nutter John, of Blackman street, Southwark, Surrey, cheese monger. [Russel, Lant street, Southwark. March 9.
- Nott Thomas, of Ledbury, Herefordshire, money scrivener. [Barnaby, Worcester. March 23.
- Oakes John, of Union street, New Bond street, coal merchant. [Dixon, Nassau street, Soho. March 5.
- Parson John and James Gardiner, of Clement's lane, Lombard street, London, and of Saville place, Lambeth, Surrey, hop merchants. [Wright and Bovill, Chancery lane. March 9.
- Philips George Lott, of Hammersmith, merchant. [Scott, St. Mildred's court, Poultry. March 9.
- Padbury Philip, of Bensington, Oxfordshire, coachmaker. [Townsend, Newbury. March 19.
- Parkes John, of Birmingham, brass founder. [Bedford, Birmingham. March 23.
- Rogers Thomas, of Kennington road, Lambeth, victualler. [Yates, Hampton street, Walworth. March 2.
- Rust John, of Great Waltham, Essex, miller. [Copland, Chelmsford. March 9.
- Rushir John, of Reading, hosier. [Vines, Reading. March 9.
- Roberts T. of Helston, Cornwall, grocer. [Mayow, Gray's Inn. March 26.
- Redhead Daniel, of St. Margaret's Hill, Southwark, Surrey, tin plate worker. [Williamsons, Clifford's Inn. March 30.
- Robert Charles, of Great Tower street, victualler. [Noy, Mincing lane. March 30.
- Shackleton John, of Nottingham, hosier. [Cutts and Sanders, Nottingham. March 2.
- Spencer Thomas, of Manchester, flour dealer. [Hewitt, Manchester. March 2.
- Style Edward, of South Molton, Devon, woollen draper. [Stephens, Bristol. March 5.

## *Bankrupts.*

- Southan** John the younger, of Worcester, hop and cider merchant. [Allen, Sedbury, Worcester. March 9.
- Sanders** Thomas of Tooting, Surrey, tallow chandler. [Benton, Swan yard, Blackman street, Borough. March 9.
- Salt** John, of John street, St. Luke's, jeweller. [Mayhew, Lower James street, Golden square. March 12.
- Scurry** Francis, of Kent Road, Southwark, coal dealer. [Webb, St. Thomas street, Borough. March 12.
- Scrape** Jeffery, of Red Lion street, Holborn, stock broker. [Wright and Co. Chancery lane. March 19.
- Syms** Jonathan, of Trowbridge, Wiltshire, clothier. [Williams, Trowbridge. March 19.
- Saxby** Henry, of Carlton, Kent, market gardener. [Sherwood and Parrell, Canterbury square, Southwark. March 30.
- Tebb** Thomas, of Wardour street, Soho square, Middlesex, leather seller. [Roche, Nicholas lane, Lombard street. March 23.
- Taylor** J. of Monk Wearmouth, Durham, ship builder. [Blakiston, Symond's Inn. March 26.
- Townsend** Job, of Barnsley, York, grocer. [Gauy and Haddan, Angel court, Throgmorton street. March 30.
- Vandrant** James, of Brewer street, Golden square, printer. [Wall, King street, Clerkenwell. March 5.
- Wilson** William, of Commerce row, Blackfriars road, Surrey, druggist. [Barber, Great Ormond street. March 2.
- Wood** John, of Hexham, Northumberland, currier.
- Ward** Thomas, of Shipston upon Stour, Worcestershire, haberdasher. [Belamy, Shipston upon Stour. March 19.
- Wilson** Thomas, of Commercial row, Blackfriars road, Surrey, grocer. [Collingwood, St. Saviour's Church yard. March 23.
- Webster** J. and J. Harrison, of Liverpool, merchant. [Windle, Bartlett's buildings. March 26.
- Wesoby** Edward, of Great Grimsby, Lincolnshire, shopkeeper. [Jackson, Hull. March 30.
- Wilkinson** James, of Kingston upon Hull, draper. [Willis, Warrford court, Throgmorton street. March 30.

**DOUBTS as to the Accuracy of Lord Mansfield's Argument  
in the Case of Zouch v. Parsons, with Respect to the void  
and voidable Acts of Infants.**

IN a former communication I ventured to throw out a doubt as to the force and accuracy of the reasons upon which my Lord *Mansfield* relied in that part of his argument upon the case of *Zouch v. Parsons*, where the ground of the distinction between the *void* and *voidable* acts of infants is considered; and I at the same time proposed to remit an examination of those reasons for the use of the *LAW JOURNAL*. Every *lawyer* must hold the memory of so exalted a character in the greatest respect, but it is impossible to study many of his arguments and not see that his lordship's anxiety to support substantial justice and the equity of the case, sometimes, induced him to look with less favour upon established principles and authorities, than had been usual with most of his predecessors upon the bench. The argument upon the second question, in the case of *Zouch v. Parsons*,\* may perhaps be regarded as one instance of it. The doctrine advanced by his lordship in that case is, that it is the solemnity of the instrument, and not the semblance of benefit to the infant which renders an infant's conveyance voidable only; and secondly, that there is no difference in this respect between *feoffments* and *grants*, and other *deeds* whose nature it is to convey an *interest*; and consequently, that the *grant*, *lease*, and *release*, &c. of an infant, where there is no semblance of benefit, is not *void* in point of operation, but *voidable* only. Now on the other side it will be contended, that the genuine conclusion, which the authorities in the books sanction, is, that it is the *semblance of benefit* to the *infant* which renders his conveyance *voidable* only; that the only exception to this is the case of a *feoffment* made by an *infant* in person, and, therefore, that the *grant*, *lease*, and *release*, &c. of an infant, where there is no semblance of benefit, are in point of operation totally *void*. The object of the proposed examination is to disprove the former, and to support the latter propositions.

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\* 3 *Burr.* 1794.

His lordship, in the first place, relies upon the following passage in *Perkins*, sect. 12, "All such gifts, grants, or deeds, which do *not* take effect by delivery of his hand, are void; but all gifts, grants, or deeds, made by infants by matter in deed or in writing, which do *take effect* by delivery of his hand, are *voidable* by himself, his heirs, and by those who have his estate. The words 'which do take effect' are an essential part of the definition," said his lordship, "and exclude *letters of attorney* or deeds which delegate a mere power, and convey no interest."

Now we are prepared to contend, that the true signification of the passage just cited from *Perkins* is directly the reverse to that which the court put upon it in the case of *Zouch v. Parsons*; for *Perkins* does not, by the words *gifts, grants or deeds*, mean the instrument of conveyance, but the *act* itself; because from his speaking of gifts, grants or deeds, by *matter in deed or in writing*, it is clear that he alludes to an act which may either be by writing or not, and consequently he cannot mean a *conveyance*, nor be taking a distinction between the solemnity or want of solemnity in the instrument which records the transaction. What then is the sum and substance of the distinction taken by *Perkins* in the words, 'which do not take effect by delivery of the infant's hand?' Is it not, as I have observed in page 59, that where the substance or thing itself as the land in case of livery of seisin by the infant in *person*, is delivered by the hand of the infant, such act is voidable only; but where the substance contracted for or thing itself is not either in point of fact or by the particular instrument of conveyance, capable of manual transmission, as for example, where there is a grant of a rent, or other *incorporeal* hereditament, or where there is a conveyance by lease and release, or other instrument where *livery* is not made, that in such cases the act is totally void. That this was *Perkins'* meaning is evident from the examples which he puts in the next section,\* for the purpose of illustrating that very proposition. "And therefore" says *Perkins*, "if an infant make a deed of feoffment, and a letter of attorney unto a stranger to make livery of seisin, and he make livery of seisin by force thereof, he shall be taken for a disseisor." But he would not, it is

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\* Sect. 13.



certain, have been taken for a disseisor if the instrument had not been totally void. Had it been voidable only, he would have had a sufficient authority for his entry to make livery of seisin until it was avoided. As the example just extracted is the case of a power of attorney, it should be observed here that the court in *Zouch v. Parsons*, asserted that there was a difference between instruments, which delegate a mere power and those which convey an interest; and upon the strength of that assertion the advocates for his lordship's doctrine might perhaps say that the case, put by *Perkins*, of a power of attorney is an exception to the general rule, and does not effect the general question; but upon that assertion of his lordship, I have to remark, that it was by no means new. A similar distinction had been taken by counsel, *arguendo*, in the case of *Thomson v. Leach*,\* and there the whole court held that the reason is the same to make them both void. What possible reason can there be for any difference between them? Powers of attorney, as deeds or instruments, take as much effect by the delivery as grants do. It is as essential that the former should be delivered in order to render them perfect instruments of their kind, as the latter. But *Perkins*, in the same section, gives another example which steers clear of any such objection. "If an infant being seised of a *carve* of land, grant a rent-charge to be issued out of the same *carve* by deed, and the grantee distrain, he shall punish him as a trespasser; notwithstanding that the infant did deliver the deed with his own hand." Now if the deed of grant had not been absolutely void, the intended grantee could not have been punished as a trespasser, because if it had been voidable only, he would have had a right to distrain for his rent so long as the grant continued in force, that is, until it was avoided. *Perkins*, therefore, is an authority that the grants and such like instruments of infants are void, but that where the substance or thing itself is delivered *de manu in manum* from the infant to the feoffee, as in case of livery of seisin in person, there the act is not *ipso facto* void, but only voidable. His lordship observed that "the words in *Perkins* 'which do take effect,' are an essential part of the definition, and exclude powers of

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\* See 3 Mod. 296. 1 Lord Raym. 313.

"attorney, or deeds which delegate a mere power and convey no interest." True, the words are essential, but they only form a fragment of the essential part of the definition. Let us take the whole, and then see what the definition imports. The expression of *Perkins* is not merely 'which do take effect,' but take effect *by delivery of his the infant's own hand*. Such as do take effect by delivery of his hand are voidable only, but such as do not take effect by delivery of his hand are void. Then put the following questions, and see what *Perkins* is an authority for. Does a *feoffment*, with livery by the infant in person, take effect by delivery of the infant's own hand? Yes; because the land itself is transferred from the hand of the infant to the feoffee; and therefore such a *feoffment*, by an infant, is voidable only, and not void. Does the grant of a rent, a lease and release of the land, or a power of attorney, take effect in any case by the delivery of the hand? No, but by the delivery of the deed.\* The grant, lease, and release, &c. and power not taking effect therefore by the delivery of the infant's hand, are void *ab initio*, and not voidable only. Do not letters and powers of attorney, as legal instruments, take effect by delivery of the deed equally with grants, &c.? Are not the same formalities requisite? They certainly are, and consequently there is no substantial reason why an infant's delivery should give effect to his grant, but not give effect to his power of attorney. Both, however, are, according to *Perkins*, void. That the construction which I have given of the passages in *Perkins* is the true construction, I am the more firmly convinced from the circumstance, that those very passages are relied upon in *Shepherd's Touchstone*,† as an authority for the doctrine that *feoffments*, which take effect by delivery of the infant's hand are only voidable, but that grants, &c. which take effect by delivery of the deed, are void: The cases in the *year books* also, to which *Perkins* refers, favour the interpretation which I have submitted; That it is the delivery of the substance or thing itself, and not the delivery of the deed or evidence of the transaction, which renders the act of an infant voidable only. And that the grants, &c. of infants are void, where there is not a

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\* *Shep. Touch.* 232 233.

† *Ubi. sup.*

manual transmission by him of the substance or thing itself, is supported by the second book of *Finch's Law*, page 102, where it is said that "a grant by an infant, under the age of 21 years, may be avoided at any time by entry, action, &c. if they deliver it with their hand as in a feoffment, and themselves make livery or a gift of goods and themselves deliver them: but if they deliver it not with their hand as in a grant of rent, advowson, &c. or by feoffment by letter of attorney, &c. it is merely void, and nothing at all passeth." Now here we have the very distinction which I am contending for, viz. that it is handing over the actual possession of the land or goods by the infant which makes the contract or transaction voidable only, and for this reason it evidently is that grants of rents, advowsons, &c. being incorporeal hereditaments, and not capable of manual transmission, are said by *Finch* to be merely void, and that nothing at all passeth. So in the case of *Lane v. Cowper*,\* it was resolved by the whole court, except *Gawdy*, that the lease of an infant without rent reserved is void, and that a feoffment made with the proper hand of an infant, is but voidable.

The same argument and distinction is further supported by a case in the year book, 26 H. VIII. 2, where the opinion of the whole court was, that, if an infant grant an advowson, within age, to a man and his heirs, and when he comes of age, confirms the estate of the grantee, such confirmation is of no avail, and *Fitzherbert* said, he might plead that he had not granted by the deed, notwithstanding that it was delivered by him, because nothing passed. And it was said also that if the infant had made livery of the church, that might have altered the case, as if he had given the goods and delivered them himself, he shall not have writ of trespass any more than he shall have an assize, where he makes livery of seisin himself; but if he had made letter of attorney, it had been otherwise. *Brooke*, in his *Abr.* 600 pl. 1, says, the confirmation was of no avail, because the grant was void; and very judiciously adds this observation, and "so observe that livery of the deed of an infant doth not resemble livery of the land or goods by him." The case last cited was urged by Mr. *Dunning*, in the case of *Zouch v. Parsons*, but Lord *Mansfield*, when he came to notice the

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\* See *Moore* 105. 7th point.

arguments, forgot that he had to get rid of this case, although he relied on a contradictory remark by *Brooke*, in his *Al r. dum fuit infra etatem*, pl. 1, upon a case in the *year book*, 46 E. III. 34, to the following effect, "so note here that the writ *dum fuit*, &c. was admitted to be of a rent, and yet by some the grant of an *infant* was void and not voidable, which is *not* so, as appears here; for then his action would not lie, and besides the *delivery* of a deed cannot be *void* but only *voidable*." From that observation, Lord *Mansfield* concluded, that the *grant* of an *infant* was not void, but *voidable*, and that the *delivery* of a deed cannot be void; but it doth not follow because *Brooke* said that the grant was *voidable* and not *void*, and that the *delivery* of a deed could not be void, that it was not *void* in point of *operation*; the deed might be a *void deed*, and yet the *delivery* good. No act is necessary to avoid it; the only difference is as to the manner of pleading. In *Whelpdale's* case, 5 Rep. 119, it was said, if an *infant* delivers a deed, he cannot plead *non est factum*; for it is his deed at the time of the action brought, and ought to be avoided by special pleading with conclusion of judgment *si actio* 1 H. VII. 15, a. and b. And upon this case it was observed by the court in *Thompson v. Leach*,\* that the book and the other cases where the deed was not *voidable* only means, "that the *infant* shall not plead *non est factum*, and give *infancy* in evidence, but shall plead his *infancy* specially, because the deed to all appearance has all things necessary to a deed, and seems to be justly executed, but, for some latent cause, has no operation in law; which cause ought to be shewn, whereby it may appear to be ineffectual. So *Perkins*, although he says in the above case of a *grant* by an *infant* that the *grantee* would be a *trespasser*, and consequently the *grant* void in *operation*; yet the *infant* could not plead that there was *not* any *grant*. "But in such cases," says *Perkins*, "the *infant* nor his heir nor his feoffee cannot, against such a deed in pleading, say, that he did not grant by the deed, for that the deed is not *void* but is *voidable*, as to say that the *grantor* was within age, &c. at the time of the grant, &c." But supposing *Brooke's* meaning to be, for the deed was not *void* in *operation*, but *voidable*, we observe, that his lordship had before him, on

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\* *Supra*.

the one hand. an inference made by *Brooke*, not from a positive decision, but from an admission, that the writ would lie in favour of a *grant* being only voidable, and the delivery of a deed good; and on the other his lordship had a conclusion drawn by the same *Brooke*, that the delivery of the deed of an infant did not resemble livery of the land; in other words, that livery of a deed of an infant was void; a conclusion not drawn from a tacit admission, but the legitimate result of a positive and express decision upon the point, that the *grant* of an infant was void. Was it not then a most extraordinary circumstance, that his lordship should suffer himself to be governed in his opinion by the comparatively weak inference which *Brooke* made in consequence of an admission that the writ *dum fuit*, &c. would lie of a rent, and yet pass *sub silentio* a positive determination by the whole court to the contrary in a case more modern by a hundred and fifty years, and to which, if it had been so very desirable, his lordship might have had a conclusion by the same *Brooke* in direct opposition to his inference from the former case. *Brooke* is certainly a most respectable authority, wherever his individual opinion applies; but upon the present question, supposing that in the case of 46 E. III. he meant that the deed was good in point of operation, what have we but two conclusions which are at variance with each other? If the advocates for Lord *Mansfield's* doctrine choose to say, upon the authority of the admission in a case in the reign of *Edward* III. that the delivery of the deed of *grant* by an infant is good, we, on the other side, may say upon the authority of that in the reign of *Henry* VIII. that such a *grant* is void. If the contradictory observations do not *paralyze* each other, and deprive both of all weight, I think it needs no argument to prove that a conclusion drawn from an express determination, ought to have greater weight, than one which does not come before us countenanced by any sanction of the kind. My Lord *Mansfield* made choice, however, of the inference by *Brooke*, from the admission in *Edward* III. and we can only account for it, by supposing that the legitimate conclusion by the same person, drawn from a case in point in the reign of *Henry* VIII. together with that case itself, in some way or other had slipped his lordship's memory. It must be repeated, however, that we contend that

*Brooke* does not in either case mean that the deed hath any operation, but only that *non est factum* cannot be pleaded to it. The observations which have been offered, do therefore, it is presumed, furnish some ground for an opinion, that it is the delivery of the *substance* itself, that is the *corporeal* possession of the land or goods, and not the *delivery* of the *instrument* or *conveyance*, which causes the transaction, to be *voidable only*, in cases where there is no *semblance* of benefit to the infant, and, consequently that there is a material difference between *feoffments with livery* of the land by the *hand* of the *infant* himself, and *grants and deeds* where the *conveyance* only is delivered, and *livery* of the *substance* is not and cannot be made by the *hand* of the infant himself. Lord *Mansfield*, however, in the above cited case of *Zouch v. Parsons*, said "there is no difference in this respect between a *feoffment* and *deeds* which convey an *interest*. The reason is the same. "The *delivery of the deed* must be in the presence of *witnesses*, as much as the *livery* of *seisin*; the ceremony is as solemn. The presumption, that the witnesses would not attest if they saw him an infant, holds equally as to both." What? Is there no difference between *livery of seisin*, which *anciently* (and it is to ancient times that we must look for the reasons and principles of things) was obliged to be delivered *coram paribus de vicineto*, before the peers or freeholders of the neighbourhood;\* and the *delivery* of a deed of *grant*, which might have been secretly delivered in the presence of dependant and subordinate persons? Is there no difference, in point of *solemnity*, between an open and public transaction, which all the most substantial, and in the eye of the *old law*, *important*, persons in the country are presumed to witness, and the secret delivery of a deed of *grant*; a transaction which may take place privately in one's closet, in the presence of one's domestics? Let any man ask himself the question, whether it was not more likely that an infant would be prevented by the independent freeholders of his neighbourhood from making *livery of seisin*, an act, of the prudence or propriety of which he was evidently, from his age, ignorant, than that an infant's own *domestics* or the domestics and dependants of a designing *grantee* himself even, should

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\* 2 *Black. Com.* 315.

refuse to attest the deed of grant, because they saw him an infant? We, however, do not think that the circumstance of an infant's feoffment being voidable depends so much upon the extraordinary solemnity of the instrument as upon the delivery of the land by the infant himself. I shall close my argument in support of the doctrine, that it is not the delivery of the conveyance, but the public livery of the possession of the substance itself that is the ground of an infant's act being only voidable with a further authority of the utmost respectability. Lord Chief Justice *Holt*, and all the other judges in *Thomson v. Leach* above referred to, said, that "the reason why feoffments of infants are voidable only, proceeds from the solemnity of livery of seisin in the sight of the country, which takes notice of the notorious alteration of the possession. But (said they) contra of a deed which may be delivered in a private manner."

We have in the next place to follow his lordship upon the point, whether the grants and other similar conveyances of infants are void or only voidable, where there is no semblance of benefit to the infant from the matter of the deed upon the face of it; for the purpose of ascertaining whether the semblance of benefit to the infant is the true ground or not; but previously reminding the reader that the arguments which have been already urged upon the authority of *Finch*, and the case in 26 *Henry VIII.* are express that the grant of an infant is void.

To prove such deeds voidable only, his lordship quotes the following passages from *Littleton's tenures*, sect. 259, "If before the age of 21, any deed or feoffment, grant, release, confirmation, obligation, or other writing be made by any of them, &c. all serve for nothing and may be avoided." Now as *Littleton* is speaking in very general terms, and is not treating of the distinction between the void and voidable deeds of infants, we are not warranted in inferring from the expression, and may be avoided, that all the deeds of an infant are voidable only. Upon equally strong grounds may we, who are on the other side, infer from the preceding expression, all serve for nothing, that all the deeds of infants are absolutely void, for, unquestionably they must be so if they all serve for nothing. But it is plain that *Littleton's* observation does not apply to the distinction between void and voidable acts; but that he merely means, that infants are not bound by their

deeds. Let us see in what sense his great commentator understood the passage. Lord Coke observes upon it, "the law hath provided, for the safety of a man's or "woman's estate, that before the age of 21 years, they "cannot *bind* themselves by any deed." But it admits of demonstration, that *Littleton* did not consider all the deeds of *infants voidable* only, for *Littleton* himself, as one of the judges in a case in the reign of *Edward IV.* see *year book*, 18 E. IV. 3, where *trespass* was brought by an infant within age, against his lessee, who had entered by virtue of a lease from him, held that "there is a diversity "where a lease or feoffment is void, and where it is void- "able, and that the lease there was *void* and the lessee "a disseisor *ipso facto*, before any entry by the infant "himself who was the lessor."

His lordship, in the next place, said that in 2 *Inst.* 673, "a bargain and sale, enrolled by an infant, is denied "to be matter of record which the infant must avoid dur- "ing his minority, and that the book says he may avoid "it *when he will*." But why was it denied to be matter of record, which an infant must avoid during his minority? If the reader will look at the place referred to, he will find the reason was, the *bargain and sale* of an *infant* is not effectual; but if the bargain and sale had not been void in operation it would have been effectual until avoided at least. His lordship, from some unaccountable cause, omitted the reason assigned by Coke for the infant's having the ability to *avoid it when he will*, and which reason was "for the deed was of no effect to raise an use." As therefore the only effect and operation of a perfect *bargain and sale* is to raise an use; was not this reason tantamount to saying, that the deed was *void* and had no operation. What Coke meant by the expression, 'he may avoid it' must have been the same as that used in *Whelpdale's* case, that you cannot plead *non est factum*, and say there is no deed; because the deed, as to all outward appearance, that is, as far as *form* and *formality* go, is a good conveyance, although from the *latent* circumstance of *infancy*, it is inefficacious. No court can say it is a void conveyance until that latent circumstance is made apparent, by evidence of the special matter; and where that is done, then the deed is seen to be *void*, and all strangers may take advantage of it, without any act having been done to avoid



it. The infant cannot say, that it is *not his deed*, but he must shew that being *his* (viz. an *infant's deed*) it is a void one.

Lord *Mansfield* however asserted, that "the reason why an infant cannot plead *non est factum* is, because it has an operation from the *delivery*, and not because it has the *form* of a deed." But it is presumed that what has been quoted above from *Perkins*, and from *Whelpdale's* case, as well as the doctrine laid down by lord Chief Justice *Holt*, and the other judges in *Thompson v. Leach*, will incline the reader to think that the reason is, because it *has* the form, and not because it has an operation from the delivery. His lordship himself admits, in page 1808, that *powers of attorney* are void. Now it is notorious that an infant cannot, in the case of a power of attorney, plead *non est factum*, and so all the court said in the above case of *Thompson v. Leach*. The conclusion, therefore, upon his lordship's own admission, is, that it is, because it has the *form* of a deed that *infancy* cannot be pleaded. His lordship followed up his observation with the following remark, which he seems to have considered conclusive. "The deed of a *feme-covert* has the *form*, but she may plead *non est factum*, because it has no operation. The distinction" (he continues) "between the deeds of *feme-coverts* and *infants* is important—the first are void, the second voidable." The argument from the passages last quoted is to this amount—a *feme-covert* may plead *non est factum*; an *infant* cannot; yet both have the form; consequently it cannot be upon the ground that an infant's deed has the form that he cannot plead *non est factum*. But let us see if the *mist* which surrounds this *dilemma* cannot be dissipated. Where a *feme-covert* attempts to *grant*, for example, there, although it has the *form* of a deed, there is, in the eye of the law, nay, in point of fact, no deed; for to every deed, there is requisite a *grantor* and a *grantee*; but there is no *grantor* in the case of a *feme covert's* grant, consequently no deed of grant, for the very being or legal existence of the woman is suspended, or at least is incorporated or consolidated into that of the husband. 1 *Black. Com.* 442.

It is not the mere incapacity of doing a binding act, arising from the disability of *coverture*, that is the reason of there being no deed. That consequence results from there being

in the contemplation of law no such person in existence during the coverture as to such purposes. And even after the death of her husband, she may plead *non est factum*; because it is impossible that the grantee can shew there was a grant, for the more material requisite is wanting, viz. a grantor. Whereas in the case of an *infant's* grant, there is a grantor and every other requisite to constitute a good deed of grant. This the grantee may make apparent, and consequently the *latent* defect of *infancy* must be shewn, before the deed is avoided, but when it is shewn then it is manifest that the deed was a void one. The delivery itself, in the case of a woman, is void; for there is no such person legally in existence as the person who pretends to deliver: she is *civiliter mortua*, as a monk, as to this point. See *Bro. tit. faits. 23*.

Lord Mansfield then quoted *Perkins*, sect. 154, where it is said, that "if a first delivery take effect, the second is void; as in case an infant makes a deed, and delivers it again as his deed, this *second delivery* is void; but if a married woman deliver a bond unto me, or other writing, as her deed, this delivery is *merely void*; and therefore, if after the death of her husband, she being single, deliver the same again unto me as her deed, the second delivery is good and effectual."

It is by no means clear law that there is any such distinction between the delivery of a deed by an infant; although the same doctrine is advanced in *Sheppard's Touchstone*, 60, and in 2 *Roll. 26*, pl. 2; for *Rolle* cites no authority, and the *Touchstone* refers to *Perkins*. Now *Perkins* himself is without any authority, for the cases cited by him do not go to the deeds of *feme-coverts*. The objection to the distinction is not only, however, that the authorities referred to do not support it, but that there are authorities *against* any such distinction; for there are cases in the reign of *Henry VI.* and *Henry VII.\** wherein it was held that there is the same law in the case of a *feme-covert* as of an *infant*, with respect to a second delivery of their deeds. It is allowed, however, that the modern doctrine is that there does not exist such a distinction, and that a *feme-covert* may, after coverture, plead *non est factum*; but the books do not furnish us with the grounds of

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\* See 1 H. VI. 4. 1 H. VII. 14.

the difference. The only one which suggests itself to my mind is, that which I have above stated.

Although in the abstract this is a question of very great importance, yet it is of no consequence as far as it regards the subject now under discussion, for it was urged by Lord Mansfield merely to prove that the deed of an infant is voidable and not void, and we are disposed to concede that it is only voidable; for certainly there are many authorities besides *Perkins*, as the *year books*, 1 H. VI. 4; 8 H. VI. 7, 21; 1 H. VII. 14; *Bro. Abr. fails*, pl. 8; 2 *Roll. Abr.* 26; and *Shep. Touch.* 60, amongst many others, to shew that it is only voidable. But the material point to be considered is in what sense the deed may be said to be voidable only and not void. I maintain, it is because in point of form it is a deed, and therefore *non est factum* is not pleadable, as contended above with respect to *Whelpdale's* case; but although *non est factum* cannot be pleaded, because it is good in point of form, yet it is void *ab initio* as to all operation. The words used by *Perkins*, if the first delivery take effect, are important, for in case of an infant, the first delivery does take effect, because there is a person to deliver. In the case of a *feme-covert*, the first delivery doth not take effect, because there is no such person in existence, she being *civiliter mortua*, and her civil functions suspended, as to any separate capacity of making a deed. In *Shep. Touch.\** it is said, that if an infant, &c. deliver a deed, &c. (in which case the deed is not void but voidable) and after, the infant being of full age, do deliver this deed again the second time, this second delivery is void. Now here we are expressly told that the deed is voidable; but in what sense is it said to be voidable? clearly not that it hath any operation, but that *non est factum* cannot be pleaded; for the *Touchstone* refers to *Whelpdale's* case, which is a principal authority for our doctrine; and it refers also to the very section of *Perkins* which Lord Mansfield cites. *Rolle*, after saying that the second delivery is void, adds this reason, because it was but voidable by plea, not void; and he in 2 Vol. 26, pl. 8, explains it further by observing, that 'if a writing by the first delivery takes effect as a deed, although it be void in operation, yet a second delivery, at a time when it may operate in law, shall be void, and shall not make it good,'

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\* *Loc. cit.*

and he instances the case of a deed of confirmation of an *annuity* delivered before the deed of *grant*, and delivered a second time after a *grant*. This second delivery (said he) is void, because, although by the first delivery it did not take effect as a confirmation, *but was void in operation* yet, it was *his deed*, for he could not plead *non est factum*. So with respect to the second delivery of the deed of *grant* of an infant, although by the first delivery it did not take effect as a *grant*, but was void in operation, yet it was *his deed*, for he could not plead *non est factum*. See also *Loc. cit. pl. 10*. It is true that a contrary opinion was expressed in the 8 *H. VI.*\* and in the other cases referred to by *Rolle*, with respect to the particular case of the *annuity*, some contending that it was a deed by the *first* delivery, others that it was not. Whether it was a deed or not seems not to have been decided, but all appear to have thought that if the first delivery takes effect, the second is *void*, for the judgment went upon the default of its never having been traversed that the first delivery was before the *grant*, (see the case, and see also *Bro. Abr. Travers per sans ceo. 59*) and that specialty could not be avoided by mere averment; 1 *H. VII. 14*; 6 *Bro. Abr. Det. 135*. But this difference of opinion goes only to the question, as to whether the first delivery, in that particular case, made it a deed or not, and does not affect the general proposition, that where there is a deed by the first delivery it cannot be denied by plea of *non est factum*, although it is void in operation. Nor do those cases shake our arguments upon the point of infancy, but on the contrary confirm them, for in those very cases it was said that if one *within age* make a deed, and deliver it *within age*, and redeliver it *at full age*, yet the *deed* is *void*, and *Martin* gave the reason: the deed was *void* by plea, but not *void* on the first *livery*; 8 *H. VI. 7*. So in another argument of the case, it was said that, if an infant delivers a deed to me, within age, this is a deed, and yet I shall never have any advantage from it, 8 *H. VI. 22*; *per Godred*. And again in 1 *H. VI. 4*, and 1 *H. VII. 14*,† it was said by *Paston*, *Rolfe* and *Vavisor*, that the second delivery was *void* because it took effect (*tiel quel puet estre.*)

After stating from *Perkins* that the second delivery of

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\* See the Year Book, 8 *H. VI. 6* and 21.

† See the Year Books.

an infant's deed is void, because the first was voidable, as before observed, his lordship then said that "two objections had been made at the bar to that proposition; the first being that leases by an infant by deed, upon which no rent is reserved, are absolutely void, therefore, the criterion 'whether the deed is void or voidable' does not depend upon the *delivery*, but upon the *matter and contents*, 'whether it may possibly be for the infant's benefit;' and secondly, a surrender by an infant by deed is *absolutely void*, therefore all deeds are not voidable only." Now, before I follow the court in combating the force of those objections, I must remark that in the arguments on the case, the distinction which I have ventured to submit, between a deed being as a deed voidable only, and its being at the same time *totally void* as to any operation, which it could have, seems not to have been sufficiently attended to and enforced by the counsel in *Zouch v. Parsons*; for we will without hesitation admit, that whether the deed is void or only voidable doth depend upon the *delivery*; and at the same time contend, that whether that deed hath any operation or not depends not upon the *delivery* but upon the *matter and content*; for our argument is that, where there is a semblance of benefit upon the face of the deed, it hath an immediate operation, and cannot be avoided, until the infant is of sufficient age to judge of the prudence of his making such a contract; but where there is no semblance of benefit, there, although the deed is a good deed in point of form, and cannot be avoided without pleading the special matter, yet as to any operation it is *totally void*; and the infant, either within age or at any other time, although he does no act to avoid it, may set it at nought by pleading specially. We do not therefore object to the proposition that the first delivery makes the deed good, provided it be understood that, although voidable on account of its having the form of a deed, it is nevertheless *totally void in point of operation*; and we, therefore, shall not endeavour to substantiate those objections with the view of proving that the deeds being void or voidable, depends upon the delivery, but for the purpose of shewing that those deeds are in point of operation void.

"As to the first objection," said his lordship, "there are many *obiter* sayings, but there is no sufficient authority clearly to outweigh the reason against the position. I can-

not find a case adjudged *singly* upon this ground." Now let "us see how that is. In *Humphreston's case*, 2 *Leo.* 216; *Moore*, 103, under the title of *Lane v. Cooper*, it was resolved, by the opinions of *Wray* and *Southcote* against *Gawdy*, that the lease being without rent or other recompense, was utterly void; and *Gawdy* himself considered it good upon the ground *solely* of its being a *good consideration*, and for his profit, it having been made to try his title. Lord *Mansfield* observes, that the judgment was upon the rights and merits of the case, and not upon the point of the lease. Now, *Moore* informs us, that the case was divided into *ten* points, the *seventh* of which was, whether the lease of an infant without rent reserved is void or voidable? And 'they all, except *Gawdy*, agreed 'that it is *void*, because it hath not any *consideration*; 'but if *rent* is reserved, it shall be but *voidable*, and so a 'jeoffment made with the *proper hand* of an infant is only 'voidable', and they said that any stranger might take advantage of it, by allegation, evidence, or otherwise. See *Moore*, 105. This case, therefore, appears to me to look *very* like an authority that the lease of an infant is *void* where no *rent* is reserved.

His lordship further said in opposition to *Southcote*, and *Wray*, that "it was greatly for the infant's benefit, "having been to try the title, that the objection was turning his own privilege of infancy against him to bar his "recovering and that besides the lease was by *parol*." With respect to its turning his own privilege of infancy against him, does it not shew that the court must have most strongly been of opinion that it was totally *void*, since they had so great an inducement to have considered it good, if it had been practicable? The court, in *Humphreston's case*, seems to have thought from the word *recompense* that it must be a *quid pro quo*, the benefit arising from his property and estate, which must save the lease from being void. It is almost superfluous to observe, that this lease being by *parol*, was not *voidable* in any sense of the word, but *void*, and that *non est factum* might have been pleaded.\* His lordship continued "as to the

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\* Q. Is *non est factum* the proper plea to avoid a *parol* demise; and would not the proper plea be *non demisit*? These are tantamount to each other; and therefore leave the present ques-

"second, the authority of *Lloyd v. Gregory* was cited, and "sayings *arguendo* in *Thompson v. Leach*. The case of "*Lloyd v. Gregory* was determined upon a special verdict by three judges, of whom Sir *William Jones* and "*Croke* were two." That case was as follows; a lease was made 1 E. VI. by a *dean* and *chapter* for 50 years, which lease being afterwards assigned to infants, they, 29 *Elizabeth*, took a new lease of the same lands, from the then *dean* and *chapter*, for the same term and under the same rents and covenants as were in the first. The second lease might have been avoided by the succeeding *dean* and *chapter*, under 13 *Eliz. ch.* 10, and the question was, whether the first lease was determined by the surrender of the infants? *Croke* informs us (*See Cro. Car.* 502) that 'all the court held, that a surrender by an infant cannot be by deed, but that it is absolutely void; and that a surrender by the acceptance of a second lease is void, because it is without increase of his term or decrease of his rent, and where there is not an apparent benefit or the semblance of a benefit, his acts are *merely void*.' According to *Croke's Report*, therefore, it was decided in this case of *Lloyd v. Gregory* that an *infant's* surrender is void; but Lord *Mansfield* endeavoured to invalidate this representation of *Croke* by an extract from Sir *William Jones's Reports*, page 406. 'That the second lease being void; made an end of the question, and that the judges gave no opinion upon the other points;' and upon this his lordship concluded, that it was the circumstance of the second lease being *void*, that caused the surrender of the infant not to be good, for that "the cause, ground and condition of the surrender failed." But we shall contend that the reports of *Croke* and Sir *William Jones*, are not at variance upon this case, and that the reason of the surrender's being void was, because it was the surrender of an *infant*, and not because the second lease was void.

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tion indifferent either way to depend wholly upon the effect of the lease *ab initio*. We venture to suggest this formal correction, because we apprehend our correspondent is more intimately acquainted with conveyancing than with the mere forms of *special pleading*, and we wish that his argument, which still holds, should not be subject to any cavil on account of such a trifling slip.

*Jones* says, that the first question was, 'whether the first lease was determined?' And 'that it was agreed that the second lease was void, and the first lease continued still;' but he does not say that the first lease continued, upon the ground that the second lease was in itself void; nor does it appear that the second lease was considered to be in itself void. It was argued that it was voidable only by the succeeding *dean* and *chapter*; but, if Lord *Mansfield's* view of the decision in *Lloyd* and *Gregory* be correct, the court must have held that such a lease as the second lease in that case, is merely void; that it would have been void had the surrender been even made by a man of full age. Now was any such doctrine held by the court? Nay did they not decline to give any opinion upon that very point? According to *Jones* himself the second point moved was 'whether a lease by a *dean* and *chapter*, not being warranted by the 13 *Elizabeth*, shall be void during the life of the *dean*, or only voidable by the successor?' And *Jones* says, that to that point, amongst others, 'the justices did not speak'. It is therefore manifest that the surrender could not have been held void upon the ground that the second case was in itself void. The second lease certainly was void; not that it was so in itself in its own nature, but because the surrender, which was the consideration of its being made, was void. If, however, the surrender could have been good, it is contended that the second lease would not have been totally void, but voidable only, by the succeeding *dean* and *chapter*. For surely the *dean* who made the lease would have been bound by it at all events during his life; for although the statute makes all such leases void, yet the intention of the legislature was only to protect the successors from prejudice and that would be effected without authorizing the lessor to injure his lessee by taking advantage of his own wrongful act. However, the court did not say; in *Lloyd* and *Gregory*, whether the lease of a *dean* and *chapter*, contrary to the statute, would be considered void or voidable. Lord *Mansfield* further observed, that "*Croke's* note might be confounded with what passed upon the trial at bar, for that *Rolle* states sayings to that effect upon the trial at bar." Now as *Croke* was one of the judges in the case, and professes to give the decision upon the special verdict, there cannot be a shadow of reason for believing that his note was confounded with what passed upon the trial at bar. *Croke* is too accurate a reporter, too sound a lawyer, to make any such blunders or misconceptions. With res-



pect to those sayings of Rolle, as his lordship slightly terms them, it must not be passed over that they are accompanied by the words *resolved per curiam*! Referring to this case of *Lloyd and Gregory*, Rolle says, 'if an infant surrender a lease for years to him in reversion, this is void, and cannot be made good by an agreement at full age. *Per curiam*, resolved on a trial at bar.' It is to be observed also that Rolle goes on to notice the decision upon the *special verdict*, upon the point whether the infant's agreement to the new term after his coming of age, should be a surrender in law of the first estate; as well as upon the other points, and he says, 'but upon a special verdict found of it, among other things, and afterwards, upon an argument at bar, it was adjudged *per curiam* on this point, that because it could not be for the advantage of the infant, therefore the law adjudged it void *ab initio*. These sayings of Rolle, (who appears to have examined the entry upon the roll) do therefore add additional weight to the reports of Croke and Jones; and upon the whole it is submitted that the case of *Lloyd and Gregory* also, looks very like an authority, that the surrender of an infant, where there is no semblance of benefit to him, is absolutely void *ab initio*.

Lord Mansfield then came to the case of *Thompson v. Leach* above referred to, which was as follows; a person *non compos* a tenant for life, with remainder to his first and other sons, remainder over, made a surrender to him in reversion, before the birth of a son, with intent to destroy the contingent remainder and died, leaving issue a son, and it was held that the surrender was void *ab initio*; and the son, though he claimed as remainder-man, and not as heir, might take advantage of it. "In *Thompson v. Leach*," said his lordship, "much is said in argument to prove the surrender of an infant or lunatic to be void, to get rid of some doctrine laid down in *Whittingham's case*, that the remainder-man, injured by the act, could not avoid it; but more is said to overturn that doctrine. There is no difference in this respect between the heir in tail and the remainder-man; neither claims under him whose act is in question, but both claim *per formam doni*." And he then cites *Palmer*, 254, and *Litt. sect. 635*, to show that he in remainder and the donor shall take advantage of infancy. Now the object of his lord-

ship was to prove, that the surrender being void or voidable, was not necessary to the judgment in the case of *Thompson v. Leach*, because it had been said by *Doddridge*, that 'he in remainder shall take advantage of infancy,' and because *Littleton* had said that 'it should seem against reason that a *feoffment* made by an *infant* should grieve or hurt another to take from them their entry,' &c. It was meant to be applied in this way; if the remainder-man or donor may take advantage of *infancy*, then they might have avoided the *surrender*, and so it was immaterial whether it was *void* or only *voidable* in that case. But upon this I have to observe, that the weight of authority certainly is, that a remainder-man shall not take advantage of *infancy* where the deed is only *voidable*. The passage in *Littleton* certainly does not go to prove that they shall; for that passage hath a connexion with the two preceding sections relating to *feme coverts* and *joint-tenants*, viz. that it would be hard the *infant's feoffment* should take away their entry, inasmuch as in the case of the *feme covert*, her right of entry remained, and in that of the *joint-tenant* such right of entry accrued to the survivor. That there is such a connexion between the section 635 and the two preceding sections in *Littleton*, is evident from his following up the passage above extracted with this concluding remark; and, 'for these reasons, it seemeth to some that after the death of such husband so being *within age*, at the time of the *feoffment*, that his wife may well enter,' &c. With respect to the opinion expressed by *Doddridge*, 'that the donor might enter,' it is to be observed that *Lord Coke* in *Beverley's case*, 4 *Rep.* 123, and in *Whittingham's case*, 9 *Rep.* 84, distinctly lays it down, that privies in *estate* shall not take advantage of the *infancy* of the other. And he gives this reason *that no right accrues of the donor*. He makes a few exceptions, however; as that of an *infant* seised in right of his wife, and the survivor of two joint-tenants where, (as *Littleton* observed) the right remained to the wife or accrued to the survivor, who, he says, may enter the one after the death of her husband and the other after the death of his companion. Indeed upon *Doddridge's* own reasoning, the surrender in *Thompson v. Leach*, must have been void; for he agrees to the rule that none shall take advantage of *infancy* but a privy in blood, or he who is

heir, as laid down in *Whittingham's* case. He only contends that there are some exceptions to the rule, and that those exceptions are where the following reason applies, *viz.* the reason of all this is, that one shall not be without remedy when he hath right without any *laches*; now it will be seen, that whether the remainder-man hath such right or not resolves itself into the point, whether the *infant's* deed be void or not; *Doddridge* is supposing the case of a *feoffment*, which being voidable only, hath an operation for the time; and is a forfeiture, *pro tempore* at least, of the estate for life, supposing the *feoffor* to have had such an estate; but, as the right of the remainder-man arose in consequence of the forfeiture, we perceive that if the conveyance had been of a nature to make it void in operation, instead of being voidable only, then there would have been no forfeiture, and no right of entry would have attached in the remainder-man for the particular estate would not have been affected at all, where the intended conveyance of it is void. Upon the authority of *Doddridge*, therefore, the remainder-man, in the case of *Thompson v. Leach*, was not entitled to enter, upon any other ground than, that the surrender in that case was absolutely void. Indeed, if the conveyance in *Thompson v. Leach*, had been voidable only, in point of operation, the remainder-man could not have had a right to enter in that case, for, at the time of the surrender, the remainder-man was not *in esse*, and so his right never could have accrued to him. It was the case of a contingent remainder, and this circumstance suggests another argument, that if the surrender had not been held to be absolutely void, and so the particular estate continued, the remainder-man never could have entered; for by the known rule of contingent remainders, if the remainder-man is not *in esse* when the particular estate determines, the contingent remainders had been destroyed for ever. But being void, the particular estate, consequently, did not determine; and so the contingent remainder was not destroyed. It appears, therefore, that in *Thompson v. Leach*, the question depended solely upon the ground, whether the surrender was void or not. At least this is positive, that the Judges themselves, among whom was Lord Chief Justice Holt, thought that it was necessary to decide whether the surrender was void or not, and did absolutely decide the case upon the ground that it was void.

They all held 'that the case of an *infant* and a man '*non compos*, are parallel in all things, both in law and reason, except that a *non compos* cannot stultify himself to avoid his grant. That the surrender was absolutely void. That all persons might take advantage of it, and that the estate remained in *Simon Leach* (the surrenderor) notwithstanding, and so the contingent remainder vested before the particular estate determined;' 1 *Lord Raymond*, 315. 3 *Modern*, 310.

*Lord Mansfield* said, that the comparison between a man *non compos* and an *infant*, was not just; but he did not attempt to point out any difference. Nor it is conceived could any have been pointed out besides that admitted by the court itself.

The judgment in *Thompson v. Leach* was afterwards affirmed in the house of Lords, see *Shower's Cases in Parl.* 150.

Having now gone through all the authorities which were relied upon by my *Lord Mansfield*, in the case of *Zouch v. Parsons*, upon the subject of the distinction between the void and voidable acts of *infants*, I shall conclude with merely expressing a hope, that, although I have pursued the investigation, with the freedom of an independent mind, yet that it will be found to be not disgraced by any marks of petulance. In a search after truth it always has been and ever will be with me a golden rule, 'to weigh men's reasons not their names,' bearing in mind at the same time, that when a truly great character is attacked with *effrontery*, because of an unsound argument, the assailant betrays a pitiful littleness of soul, which renders him an object of ridicule and contempt.

STUDENS.

P. S. In this communication I have declined to disprove any more of the positions of your correspondent R. R. or of his *other self* *Crito*, because it would have made it too long, and I was unwilling to confuse the examination of *Lord Mansfield's* argument with any foreign matter. Indeed with respect to many of these positions, I have been anticipated by your respectable correspondent M. G. who seems to have followed up his antagonist with so much energy as to have caused him to fly from the field with precipitation.

*Lincoln's Inn, 24th May, 1805.*

WE acknowledge ourselves much obliged to *Students* for the labour which he has taken in the investigation of this subject. He has treated it with that candour and integrity in argument, which we could wish to see adopted in every discussion concerning matters of science, and which is particularly desirable in a work of such a nature as the present. If he supposes that *Crito* and R. R. are one and the same person, he is mistaken. They have, we are assured, no more connection than himself and M. G. or than either of them and R. R. That the latter has retired discomfited and disgusted, we would not have him presume. He could not hope to support the positions which he has adopted, with better arguments than those urged by Lord *Mansfield*, and when he had shewn that his opinions were supported by such an authority, we presume he thought he had done enough. The present discussion, we believe will be as acceptable, to R. R. as it is to ourselves, and to all those who wish to see the rules and principles of the law fairly examined in order to their being placed upon their true foundation.

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*Fees of Agents, 1805.*

THE following TABLES of FEES having been published by the *Society of Northern Agents*, we believe, upon consultation with the *Master of the King's Bench Office*, we insert them for the benefit of our readers.

KING'S BENCH — COSTS FOR PLAINTIFF.

	<i>Agent's Charge.</i>		
	£	s.	d.
Instructions to sue and filing warrant	-	0	3 4
Paid for warrant	-	0	5 4
Bill of Middlesex	-	0	9 6
Latitat	-	0	11 10
Alias capias, &c.	-	0	9 6
Non om. capias	-	0	12 10
Attachment of privilege	-	0	9 6
Searching for bail	-	0	1 3
Copy notice of bail, and affidavit of justification sent	}	0	1 0
Entering exceptions to bail, copy and service		0	1 6
Common bail sec. stat.	-	0	6 6
Instructions for declaration, replication, &c.	-	0	3 4

	<i>Agent's charge.</i>		
Drawing declarations, replications, &c. per folio	0	0	6
Copies on paper, per folio	0	0	2
Ingrossing bill, per folio (exclusive of parch- ment and duty, and filing continuances)	}	0	0 2
Rule to plead		0	3 6
Drawing notice of declaration, and copy sent		0	1 6
Searching for and demanding plea		0	2 8
Attending summons for time to plead, and copy order	}	0	2 2
Copy general issue sent		0	0 6
Copy rule to pay money into court		0	0 6
Attending to take money out of court		0	1 8
Drawing issue, per folio		0	0 2
Entering on the roll, per folio, besides the roll		0	0 2
Warrants of attorney and docket		0	3 0
Notice of trial, copy, and service		0	1 6
Copy paper-book, to keep and to send into the country, per folio each	}	0	0 2
Drawing placita and jurata		0	1 6
Ingrossing record, per folio		0	0 3
Fee on passing		0	3 4
Attending to name a special jury		0	3 4
Attending to reduce		0	3 4
Venire		0	8 3
Attending to return venire		0	1 8
Distringas		0	8 9
Spa. ad test.		0	9 3
Mittimus into a county palatine		0	11 3
Drawing brief, per sheet		0	3 4
Fair copy		0	2 0
Attending court cause in the paper		0	3 4
Drawing interlocutory judgment		0	1 8
Drawing inquiry part		0	1 8
Ingrossing inquiry, per folio		0	0 3
Fee on inquiry		0	1 8
Attended execution of inquiry		0	6 8
Attending court on motions for new trials, arguments, &c.	}	0	3 4
Rule for judgment		0	3 6
Attending associate for postea		0	1 8
Attending stamping		0	1 8
Attending stamp office on other occasions		0	3 4
Notice of taxing costs		0	1 6

	<i>L.</i>	<i>s.</i>	<i>d.</i>
Bill of costs on postea - - -	0	2	6
The like on inquisition - - -	0	2	0
Attending the taxing on postea - -	0	3	4
The like on inquisition - - -	0	3	4
Drawing and entering final judgment, attend- ing and paid - - - }	0	5	8
Ca, sa. or fi. fa. - - -	0	9	3
Testatum ditto - - -	0	9	9
Non omittas ditto - - -	0	9	9
Non om. test. ditto - - -	0	10	3
Term fee and letters - - -	0	6	6

*For defendant.*

Instructions to defend and filing warrant	0	3	4
Paid for warrant - - -	0	5	4
Filing common bail - - -	0	6	6
Entering appearance action by original	0	5	6
Attending to file bail piece - - -	0	1	8
Notice of filing copy and service - -	0	1	6
Copy affidavits of justification, to deliver, plaintiff's agents - - - }	0	0	6
Notice of justification, copy and service - -	0	1	6
Attending to file affidavits of justification when bail excepted to - - - }	0	1	8
Searching for declaration - - -	0	1	8
Copy sent, per folio - - -	0	0	2
Searching if rule to plead given - - -	0	1	8
Summons for time, attendance and order, and copy sent - - - }	0	8	2
Instructions for plea, rejoinder, &c.	0	3	4
Drawing plea, rejoinder, - &c. per folio	0	0	6
Attending to deliver notice of set off to coun- sel's clerk - - - }	0	8	8
Drawing and ingrossing general issue and duty, and copy sent - - - }	0	2	0
Attending to pay money into court - -	0	1	8
Copy notice of trial sent - - -	0	0	6
Term fee and letters - - -	0	6	6

*Ejectment for plaintiff.*

Copy, declaration, and affidavit of delivery, to keep, per folio - - - }	0	0	2
no. 30. [ z ]			

	<i>L.</i>	<i>s.</i>	<i>d.</i>
Term fee of term of which declaration delivered	0	2	6
Searching for copy writ on appearance	0	1	8
Searching at the judges' chambers for plea and consent rule	0	1	8
Attending to sign consent rule			
Copy sent	0	0	6
Drawing and ingrossing writ of possession, on a single demise	0	11	6
Term fee and letters	0	6	6

*For defendant.*

Searching if ejectment moved	0	1	8
Drawing consent rule and copy to sign	0	1	6
Attending to sign same	0	1	8

The rest as in common cases.

*General matters.*

Moving side bar for rules	0	1	8
Instructions to counsels in common cases	0	1	6
Attending him and court	0	1	8
If one guinea or upwards paid	0	3	4
Common affidavits, duty and oath	0	6	1
Entering up judgment on warrant of attorney (including warrant)	2	12	6
Abbreviating affidavits and copy, per folio	0	0	2

*By original for plaintiff.*

Instructions to sue and filing warrant	0	3	4
Instructions for precipe	0	3	4
Drawing precipe for special original, and copy for cursitor, per folio	0	0	6
Fee on original	0	3	4
Fee on capais, testatum capias, &c.	0	1	8
Ingrossing capais, &c. per folio	0	0	2
Returning and filing original	0	1	4

*On the Disuse of Attornments.*

AS I apprehend it is within the scope of the miscellaneous part of your excellent and instructive month-



ly publication to insert corrections of legal works, I request the favour of your inserting in the next number a few observations on a passage of Mr. *Watkin's Principles of Conveyancing*, p. 100.

It is there stated that "the reasons however for attornment having, in a great measure, ceased. From the change of manners, and the decline of feudal principles, attornment is now rendered unnecessary to the completion of a grant." This passage implies that the ground of attornments not being unnecessary is, that the reasons which gave birth to them no longer exist, and that the rule *cessante Ratione cessat et ipsa lex* is applicable; but this is certainly incorrect, and I apprehend that when a rule is once established it will continue, though the reasons on which it is founded have ceased. As an illustration of this position, the rules of descent still remain though the reasons of these rules have long since ceased.

The real cause of the disuse of attornments is, *that they are expressly made unnecessary by act of Parliament*,

CLERICUS.

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*On the Practice of conveying to, and to the Use of a Trustee, to the Use or in Trust for Cestui que Trust.*

MR. EDITOR,

I REQUEST you will do me the favour to insert in your work a few remarks, relative to a practice of creating trust-estates, which is very prevalent, but, in my opinion, very erroneous.

When it is the intention to give only a *trust estate*, it is very common to convey to the releasee, to the use of the releasee, *to the use* of or in trust for the person to take the trust. A gentleman who has written very ably on that branch of the law, which relates most particularly to conveyancing, is of the opinion which I entertain on the subject.\* He says, "If it be the intention to give E. F. and his heirs a trust, it would be prudent to give the estate to

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\* See *Watkin's Conveyance*, p. 75, note.

"A. B. and his heirs, to the use of C. D. and his heirs, to the use of or in trust for E. F. and his heirs; for if the use was given to A. B. it might be open to the objection that he would be in by the common law, and so the limitation of the use to him and his heirs, be nugatory; and that, of consequence, the limitation of E. F. would in such case be, in fact, the first use, and executable by the statute." Now, with respect to the above quotation, it appears to me that the assertion that "A. B. would be in by the common law," is in fact begging the question. If A. B. is in by the common law, of course, the limitation over must be a trust or use executed by the statute, he being seised to the use of E. F. The learned author did not mention the reason on which his opinion was founded. To supply that omission, and to endeavour to shew that A. B. would be in of the common law, and that the practice of conveying to and to the use of the releasee to the use of or in trust for another person, when it is the intent of the parties to give him a trust-estate only, is erroneous, are the objects of this communication.

Many inconveniences were found to exist in the reign of *Hen. VIII.* from the practice of conveying estates to uses; to apply a remedy, and to restore the *old common law*, the stat 32 *Hen. VIII.* was passed. Now, it being the intencion of the legislature, in passing that act, to put estates on the same footing as they were, prior to the introduction of uses, it would follow that, where a person was seised to his *own use*, his estate would not be affected by the statute; for that was the same as at the common law. The limitation to his own use made no alteration; it was giving him a part when he had previously taken the whole. If he could have taken both a legal and equitable estate under the common law limitation, it would have been mere *surplusage* to give him again the equitable estate. It is like giving a power of leasing or jointuring to a person in a conveyance by which he has previously taken the fee-simple absolute. Then, for what purpose it may probably be asked could the practice be introduced, of limiting an estate to the use of the releasee? The answer is, to obviate the presumption which might have arisen, that the use could result to the releasor. By the letter of the statute, the use is prevented from being executed, when limited to the releasee; for the words are "when a person, &c. is seised to the use of any other persons, &c."

so that the *releasee* and *cestui que use* must be different persons. The *releasee* being then in at the common law, and the use limited to him being mere surplusage, except only to obviate the presumption of a resulting use to the grantor, he is seised to the use of the person *who* it was meant should take a trust estate, and consequently that person would take a use executed by the statute.

I shall only add that the reader will find much information on the subject of this communication in a very valuable edition of Lord Bacon's reading on the statute of uses lately published.

DEVONIENSIS.

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On the New Series of Reports in Chancery,

TO THE EDITOR OF THE LAW JOURNAL.

SIR,

I WILL, with your permission, through the medium of your Journal, put a question to the author of the present Reports in Chancery.

I should be happy to be informed for what reason Mr. Vesey (after having gone through eight volumes, and two of them in octavo size) should choose to stop and call the following, which ought properly to be the ninth, volume, vol. 1, pt. 1, of a new series? He says "it is judged *expedient* to continue them in a *New Series* with a view to the general convenience of the profession."!!!—Now so far from its being a convenience, I find it productive of great confusion, there being already *Vesey, Senior's Reports in Chancery*, as well as his. By making this division, therefore, we must distinguish the first part, I suppose, by calling it "*the Old Series of Vesey, Junior.*" This, besides disjoining the work at an awkward place, makes it particularly inconvenient to the purchasers of the former volumes. He says "the distinction of *New Series* will, it is presumed, obviate any difficulty of reference." Now the very words *New Series* create all the difficulty; for, on looking at the *first part* of the *seventh volume*, as published by Brooke, I find that *that* is also called a *New Series*, from the report having been then

first begun to be published in a smaller size, a change which was certainly judicious. Mr. *V—y* must have been misled by his bookseller, for certainly *his own judgment* could not thus have erred.

W.———

*King's Bench Walk, Temple, March 18th, 1805.*



*Heads on the inquiring into the Conduct of ADMIRAL  
BYNG. For the Defence of Administration.*

WE have been favoured with the following paper by a gentleman, to whom the profession is indebted in no small degree, for the illustration of some of the most important points in the law of real property, and who in the midst of an extensive practice which would overwhelm a less ardent mind has always found leisure to collect and to communicate a vast store of general knowledge. He probably thought that any authentic paper from the pen of *Lord Hardwicke* must be valuable to the profession, who must revere his character and admire the extent of his powers; and although this is not exactly of the class of papers which we should generally wish to collect from among the remains of the great lawyers, yet we willingly insert it, in the hope that it may be useful in its way.

THE 11th of March, 1756, Vice Admiral *Byng* received an order from the lords of the *Admiralty*, to repair to *Portsmouth*, and take under his command ten ships of the line, and to get them ready for sea with all possible dispatch. Orders had been before given in the most pressing manner to get those and all our other ships in readiness; and every method was put in practice for procuring seamen to man them. These ships in conjunction with those which were in the *Mediterranean* under Commodore *Edgecombe*, were intended to oppose the attempts of the *Toulon Fleet*, whether destined for *America*, against *Minorca*, or any other place; which was then uncertain. Mr. *Byng* knew before he went to *Portsmouth*, that the *Toulon fleet*, according to the general run of intelligence, was to consist of twelve ships of the line and five frigates.

Mr. Secretary *For*, 20th, of March, 1756, which was

after Mr. Byng was at *Portsmouth*, received intelligence from the Earl of *Bristol*, dated *Turin*, 6th of *March*, 1756, that eleven ships were upon the point of sailing from *Toulon* harbour, viz. five frigates and six ships of the line, and that two other ships were fitting out with great expedition, and that the report of an invasion of *Minorca* was very strong.

This advice was the same day sent to Mr. Byng at *Portsmouth*, by order of the lords of the *Admiralty*, with pressing instructions to get his fleet ready to sail with the utmost dispatch.

It has been pretended that the sending this intelligence to Mr. Byng was concealing the strength of the enemy from him; but this is an after thought, since his arrival in *England*, is not founded in truth, and is not complained of by him in the letters he wrote from *Gibraltar* of the 4th of *May*, 1756, where he had been informed of the real force of the *French* fleet, a list whereof came in that dispatch. The 30th of *March*, 1756, the lords of the *Admiralty* sent Mr. Byng his general instructions, a copy of which you have, No. 1.

31st of *March*, 1756, the lords of the *Admiralty*, by an additional instruction directed Admiral Byng to land Lord Robert Bertie's Regiment at *Minorca*, in case the Island should be attacked, and the governor should think it necessary; and thereby directed him, in case an additional reinforcement should be found necessary, to convoy a battalion from *Gibraltar* for that purpose. A copy of this additional instruction you have, No. 2.

These instructions will appear to have been so clear and precise, and to be so well warranted by the advices and intelligence which the administration had received of the various destinations of the *Toulon* fleet, that no reasonable objection can even now be made to them.

1st *April*, 1756, Admiral Byng, by a letter of this date, acknowledged the receipt of this additional instruction, and adds "I shall punctually observe their lordship's directions with regard to the landing Lord Robert Bertie's regiment at *Minorca*, as well as the conveying the battalion from *Gibraltar* to that Island, if it should be thought necessary; with regard to the instructions I have received, I shall use every endeavour and means in my power to frustrate the designs of the enemy, if they should make an attempt on *Minorca*, knowing the great

‘ importance that Island is of to the crown of *Great Britain*. The squadron under my command is in every respect ready for sailing except the want of men ; they will take 836 effective, now the regiments are all on board, to complete them.\*—2d of *April*, 1756, Mr. *Cleveland* acquaints Mr. *Byng* that as his speedy departure was of the utmost consequence, the lords of the *Admiralty* enjoined him not to lose a moment’s time in proceeding with those ships that were ready, and in case the *Ludlow* should not be come to *Spithead* to leave one of his ships behind to receive such men as were in her, and to take the like number out of that ship to man the *Ramilies*.—3d of *April*, 1756, Mr. *Byng* informs Mr. *Cleveland* that the *Intrepid*, *Ludlow Castle*, and *Cambridge*, were arrived, that a disposition was made of the supernumeraries so as to be able to put to sea the first opportunity, for which purpose she was unmooring in order to fall down to *St. Helen’s*.—4th of *April*, from *St. Helen’s* Admiral *Byng* writes to Mr. *Cleveland* that the ships of the squadron with the assistance of the supernumeraries brought in the above ships are now completed, and the truth was, the *Ramilies* had, including her share of Lord *Robert Bertie’s* men, more than her complement, and several other of the ships had considerably more than their complement.—6th of *April*, 1756, Mr. *Byng* sailed from *St. Helen’s*, and arrived at *Gibraltar* the 2d of *May* after a tedious passage of 27 days, occasioned by contrary winds and calms.—8th of *May* 1756, Mr. *Byng* sailed from *Gibraltar* and got off *Minorca* the 19th and 20th of *May*, when part of his fleet engaged the French. The *Toulon* fleet, which consisted of 12 ships of the line and 5 frigates had, on the 12th of *April* preceding, set sail from *Toulon* for *Minorca*, and *Fort St. Philip* capitulated to the French on the 28th *June*, 1756. In the paper, No. 3, you have an exact list of the *English* fleet under Mr. *Byng*, and of the *French* fleet, under Mons. *Galassioniere*, the 20th *May*, 1756.—25th of *May*, 1756, Commodore *Brodrick* sailed with a reinforcement of five large ships of the line for Mr. *Byng* and several transports with three regiments for *Minorca*, and he arrived at *Gibraltar* the 15th *June*, 1756.—16th *June*, 1759, Sir *Edward Hawke* sailed for the *Mediterranean* in

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\* Men wanting—*Ramilies*, 222, of which 183 lent to the *Ludlow* ; *Trident*, 98 lent to the *Hampton Court* and *Tilbury*.

the *Antelope*, and arrived at *Gibraltar* the 2d of *July*, and off *Minorca* the 18th of *July*, 23 days after the *Fort of St. Philip* had capitulated. In consequence of the loss of *Minorca*, the conduct of the administration, and particularly of the admiralty department, hath been objected to for their not sending a stronger fleet into the *Mediterranean* to the relief of *Minorca*, and for their not sending it sooner, so as to have kept the *French* fleet in *Toulon* harbour, and thereby have prevented their attempt on *Minorca*. And that even admitting Mr. *Byng* arrived there time enough to have relieved *St. Philip*, and that he had a fleet equal, if not superior to the enemy, which, if properly conducted, would have driven off the *French* squadron, it is yet insisted that *Minorca* would have been absolutely secured from invasion if our fleet had been there or at *Toulon* by the end of *March*, or beginning of *April*; and that a greater force of ships than Mr. *Byng* had would have enabled him to have destroyed the *French* squadron; and that nothing can justify the not doing both but the danger we were in at home and the want of naval strength at that time. This makes it necessary to inquire, first, whether, consistently with the probable safety of this country, a squadron could have been sent to the *Mediterranean* sooner; secondly, whether, consistently with the probable safety of this country, that squadron, when it was sent, could have been made stronger. In order to come to a candid determination of these questions, it will be necessary to state the intelligence received by the administration for some months preceding the 6th of *April*, 1756, of the designs of the *French* for an invasion of *Great Britain* or *Ireland*, and for attacking *Minorca*, or any other of the King's British possessions.

The condition of the *English* navy during that period, the state of its repairs, and number of men, and the variety of services in which those ships were employed or wanted to be employed, ought also be stated and ascertained. The state of our army during the same period ought likewise to be attended to. For although this does not relate to the admiralty department, it is very material to the present question; for if our strength at land was insufficient, it was on that account the more necessary to keep a sufficient and respectable fleet at home.

It will appear that at this time great bodies of troops were assembling along the *French* coast, particularly in

*Normandy and Brittany.* The army in *England* was between two and three thousand men short of its number; and deducting from that army the horse guards and four battalions of foot guards, which could not stir from *London*, also between three and four thousand invalids employed in garrison, and the new regiments which were then raising, which were incomplete, and without the least training, there remained no more than about thirteen thousand foot and four thousand dragoons to take the field on any emergency for the defence of this part of the kingdom. The *Hessians* were but just required; the *Dutch* were not expected; the *Hanoverians* were not moved for; and the earliest time that any of the foreign troops could be here was in *May*.

For the readier understanding the present question, the statements of the facts are adapted to two periods. The first from the time the *French* began to equip their squadron at *Toulon* down to the end of *December*, 1755.

The second from the end of *December*, 1755 to the 6th of *April*, 1759.

A general account of the distressed situation of the *English* navy, during this first period, and of the inevitable and cross accidents which occasioned it, are fully explained in the paper, No. 4. A state of all the intelligences received by the administration or the *admiralty*, relative to the equipment, force, and destination of the *Toulon* squadron, during the same period, is contained in the paper, No. 5. The intelligence of the *French* intending to invade *Great Britain* or *Ireland* during the same period is stated in the paper, No. 6. The perusal of the foregoing papers, it is apprehended, will be a sufficient justification of the conduct of the administration. As to this point, during this first period, they fully prove that the sending a squadron into the *Mediterranean* before the end of *December*, 1755, was, as things then stood, unnecessary and inconsistent with the probable safety of this country.

To this may be added the sense and opinion of other persons of knowledge and understanding in those affairs at that time. Admiral *Byng*, in a letter from *London* to Lord *Anson*, who was then at *Bath*, dated the 5th of *December*, 1755, expresses himself thus: "I cannot help saying that I do not think the intelligence from *Toulon* so entirely to be credited as to give us any uneasiness, or to make us now send a squadron to sea. I have told



“ the Duke of *Newcastle* so, and hope it will meet with  
 “ your lordship’s approbation.”

The second period from the end of *December*, 1755, to the 6th of *April*, 1756.

A state of all the intelligence relative to the *Toulon* squadron, its destination, and the attempt against *Minorca* received between the end of *December*, 1755, and the 6th of *April*, 1756, is contained in No. 7.

The intelligence received of the *French* intending to invade *Great Britain* or *Ireland*, and their preparations during the same time, are set forth in the paper, No. 8. The paper, No. 9, contains intelligence relating to the designs of the *French* on *Minorca*, which, although not received till after the 6th of *April*, 1756, serves to explain the intelligence contained in No. 7.

A general account of the state and disposition of our fleet from the end of *December*, 1755, to the 26th of *April*, 1756, is set forth in the paper, No. 10, by which it will appear that during this last period none of the king’s ships were unnecessarily or designedly kept in port, but that they went to sea on the most important services, as fast as they could be manned and fitted; in the doing which the most indefatigable pains and the utmost diligence were inculcated by the *admiralty* and practiced in the yards. It will be probably insisted that, as it appears from the intelligence received before the 11th *March*, 1756, that the administration had reason to believe *Minorca* was intended to be attacked, and as Sir Edward *Hawke* did not sail with the western squadron, which consisted of fourteen ships of the line besides frigates, until the 12th of *March*, 1756, that instead of being sent on that service Sir Edward *Hawke* ought to have been sent directly to the *Mediterranean* to the relief of *Minorca*.

In the paper, No. 11, that objection is endeavoured to be answered, and the nature, usefulness, and absolute necessity of the western squadron is for that purpose declared and explained.

And in the paper No. 12, you have an abstract of the different fleets which the *French* were equipping, on this side the straits, in *March* and *April*, 1756; and of the several fleets besides the western, and that going to the *Mediterranean*, which we sent or were fitting out at the same time. By the deduction contained in this, and the annexed papers, it appears that ten ships of the line could not, in the cir-

cumstances our affairs were then in, consistent with the probable safety of this country, have been sent sooner to the *Mediterranean* without hazarding these kingdoms; and that more ships could not, before the 6th of *April*, 1756, have been spared than the ten ships which were then sent thither. And consequently that the disgrace of our arms and loss of *Minorca* was not owing to any neglect or inattention of the administration. It is often said, and it strikes men who consider these things superficially, that with so great a fleet as ours, equal if not superior in number of ships to what we have had in any former war, it is strange so few were sent during the winter, 1755, or spring 1756, to the *Mediterranean*; whereas there always used to be large squadrons there, and particularly during the late war; in the earlier part of which a great proportion of the *English* navy was in the *Mediterranean* under Admiral *Mathews*.

In answer to which, it must be observed that no comparison can be made between the present war, and those since the revolution; in every one of which there was a powerful alliance on the continent, at war with *France*, which employed the forces and finances of that kingdom, and effectually prevented dangerous attempts on us in our colonies. There were great armies in *Flanders*, which in case of an invasion of *Great Britain*, might easily and immediately have been transported hither; and the larger part of the *French* navy was at *Toulon*. In the *East Indies* and *North America* we had no force at all, till the end of the year 1744; and when the safety of *Minorca*, during that period, is remembered, let the danger of this country in 1743, and in 1745, the danger of *America* from the expedition under the Duke *D'Auville* which sailed from *Europe*, because there was not a sufficient *western squadron* to prevent it, and the immense losses of our merchants, whose ships were taken by hundreds, be remembered also; and let it not be forgotten that all the glories and successes of our navy, with the security of our colonies and commerce, during the last war, are dated after the greatest part of the *Mediterranean* fleet was brought from thence, which enabled us to form and support that *western squadron*; to which they were entirely owing. If our possessions and our commerce increased, our cares and our difficulties increased likewise: that commerce and those possessions, extended all over the world, must be defended in every part, and defended by sea, having no other defence.

These distant dominions have in reality lessened the security arising from our situation as an island. We are vulnerable there and less invulnerable at home on their account; it is impossible to keep at all of them, perhaps at any one, a strength equal to what ever the enemy can send thither; and therefore the best, indeed the only security, arises from a destruction of the enemy's strength in their ports. We did our utmost to prevent attacks from the *French* ports in the Atlantic ocean.

Our abilities did not enable us to prevent them from the ports in the *Mediterranean* also, since both objects could not be attained. Will it be said, the defence of the *Mediterranean* was the most important, and should have been preferred to the other? In the *Mediterranean* our possessions were defended by fortifications and garrisons. *Minorca* in particular had been strengthening at immense expence for many years; a clear evidence that it was always thought there might be periods when our fleet would not prevent invasions of that island.

Preparations were therefore made in its defence till it could be relieved. However, valuable it may be, we have other distant possessions of much greater consequence to keep and much more dangerous to lose.

The preparations making at *Toulon* were not certain indications of an attempt on *Minorca* or *Gibraltar*; and the open-declarations of *France* that *Minorca* was their object argued much more that it was their *feint*. It is obvious what would have been said, and said with reason, if the government had preferred the defence of a member to the defence of the *heart*; and as the *French* had their choice, undoubtedly in that case, the heart would have been the part attacked.

An ignorant man who was to judge of facts from clamour, instructions, or addresses, would imagine that no force at all was sent to the *Mediterranean* either to prevent invasion or to relieve the island, if it should be actually attacked; and would be extremely surprised to find the plan of defence laid in the manner set forth in these papers, and that an equal if not superior sea force arrived in full time, when a naval victory must have saved the place and destroyed the *French* army. What is become of the skill and valour of this country in sea affairs, if nothing can give success but such a superiority on our side, as leaves no room for either? A neglect of the colonies is coupled with the neglect of the *Mediterranean*; whereas the first,

if true, is only a sad argument of our inability to do more for the last.

If our fleets had been kept in port when they were able to be at sea, timidity and weakness might be justly charged on the ministry; but let them stand or fall in the opinion of their own country, as these facts prove true or false.— That no ship has ever remained in port which could go to sea; and that no force has ever been kept on this side *Cape Finisterre* which the least timid man of sense would not have thought too small for the defence of every thing which is near and dear to us.

The paper sent us by our correspondent has the following note subjoined to it; but the papers referred to in the above remarks were not transmitted to us.

"This was copied from the original, which appears to have been prepared by Lord *Hardwicke*, there being in it many corrections in his own hand writing."

*A TREATISE of the LAWS for the RELIEF and SETTLEMENT of the POOR,*  
by MICHAEL NOLAN, of *Lincoln's Inn, Esq. Barrister at Law.* But-  
terworth, Fleet-street, 1805. 2 vols. 8vo. pp. 775. App. 188.

THE *poor laws* in *England* constitute a system of which there is no parrallel in the annals of political *economy* and *legislation* either in ancient or in modern times.

As long as moral feelings shall have a place in the breasts of legislators, so long must it be admitted that the *poor* are equally entitled with the *rich* to their general protection; and, though an unequal distribution of the conveniences and luxuries of life, besides that it is altogether unavoidable, might not only be thought compatible with the equality of protection, which the constitutions of society ought to afford to all, but might be deemed even most conducive to general happiness, as affording the best incentives to individual energy and exertion; yet, there is no one who does not wish that, at least a sufficiency for the support of existence may be supplied to all.

That the fruits of the earth should, under any system, be usurped wholly by a part of mankind, when the Creator intended them for the support of the whole, is a principle of which the injustice is so flagrant, that it can never be avowed by any one; and all moralists unite in the sentiment which occurs so frequently in the sacred writings, that it behoves the rich to give, out of their abundance,

to the poor. But this, though acknowledged to be a duty, has ever been deemed a duty of imperfect obligation; a duty for the breach of which *in foro conscientiæ*, he who neglects it may be reproved; but for which he is answerable, by way of punishment, to his Creator alone, whose beneficence he abuses. And even the christian religion, though it universally inculcates the duty of charity and recommends it for its excellence as a virtue, yet provides not any enforcement of it by temporal compulsion. It is true; indeed, that our religion in all cases postpones the sanction of its obligations to futurity, and, while it points out the duties of life, as between *God* and *ourselves*, leaves the temporal enforcement of moral conduct, as it respects society, to be regulated wholly by civil institutions. Yet, if we may collect any thing from the practice of the early ages of christianity, we shall find that *St. Paul* addressing the churches of *Corinth* and *Galatia* somewhat in the character of a civil institutor, though he recommends to the faithful to make a *weekly* contribution for the poor, yet leaves the amount, at least, to the pleasure of the individual. "*Now concerning the collection of the saints, as I have given orders to the churches of Galatia, even so do ye. Upon the first day of the week let every one of you lay by him in store, as GOD HATH PROSPERED HIM.*"

In *England*, however, that which in other countries is a matter of mere duty to which there is no binding but in conscience, is made the subject of strict obligation and of regular impost. Every man, however charitable or selfish he is in private, must, as a member of the common wealth, pay, towards the support of the indigent, a sum assessed according to his own supposed means, and the actual number of the necessitous within a prescribed district. Thus, to a certain degree, the moral duty, instead of being merely enforced, is extended, and the order of things perhaps reversed.

The principle upon which such a system appears to be founded is, that in a country of abundance, where some enjoy affluence and others ease, and most find the means of subsistence, no one shall be suffered to die or be driven to the commission of crime by absolute want, however his necessities have come upon him; whether by his own misconduct, by misfortune, by the inability of sickness from the afflicting hand of Providence, or by the natural decay and imbecility of age. If, from all or either of these causes, any one is incapable of providing for himself,

the public shall provide for him, by giving him subsistence or by finding him work. This is the principle of the *English* poor laws. How far it accords with the general doctrine of the moralists and of the christian religion will be easily seen from what we have already said. But the means which it takes for carrying it into effect seem directly the reverse of those, which the imperfect obligation of charity, as a christian virtue, imposes upon us.

*Charity* seems to direct that out of the abundance which, under the beneficent distribution of Providence, the industrious man shall have collected for himself, from the produce of the earth, he shall bestow somewhat, nay largely, towards the assistance of his less prosperous neighbour; and even the *Apostle Paul* recommends only that this be done by laying up his store, *as God hath prospered him*. Each then is to provide for himself first, according as his industry and his situation of life shall enable him, and then give to others.

But, by means of a forced taxation for the poor, the industrious and the prosperous, those who are affluent and those who are removed merely beyond a state of absolute necessity are taxed for the support of the indigent, whether good or bad members of society, according to a certain assessment, which can in no possible case ascertain the actual excess above the wants of the individual; and this assessment is made according to the number of the indigent, previously ascertained. Thus indigence and idleness are first to be provided for, out of the labours of the industrious, and not merely the luxury, but the ease and comforts of the latter are to be abridged, without limit, for the support of the former; till at length each may possibly be confounded in one common mass. Upon this principle, the maxim of the compulsory poor laws stand thus; the necessary wants of all the poor in the state shall be supplied first, out of the industry of the whole nation, and then, let those who are able proceed to obtain competence or abundance. In other words, let the able and industrious labour, first, for the feeble and the idle, and then let them work for themselves.

How far the substitution of this principle, instead of the former, is just or politic, may deserve serious investigation; we shall not attempt it at present, but we shall observe, that in the carrying of it into effect, by positive and compulsory regulations, as under the *English* poor laws, many difficulties occur. To the poor such laws are necessarily productive of many odious restrictions of natural liberty. To those who contribute to the support of the poor, but

whom we should greatly misname by calling them the rich, they have brought an almost intolerable burthen, which unfortunately presses by no means equally, but, like all other compulsory taxations, bears most hard upon the middling classes of society. On the magistrate they have imposed a duty of a most laborious and perplexing nature; they have compelled the country gentlemen who fill that important office to study a code which is now become as voluminous and complex as any single branch of the *English law* can be.

The propriety of this system has of late been so much discussed, that it would be needless, perhaps, for us to offer many observations upon it. Its inconveniences have been acknowledged by all;\* how far it is capable of improvement, or, whether, in principle, it is not so radically defective, as to require to be entirely changed, is a question into which we shall not inquire. A late eminent writer on political *economy*, Mr. *Malthus*, seems to think that it is altogether at war with that which he conceives to be a grand principle of nature, namely, the equalizing of the population of a country to its means of subsistence, and, that it not only tends to promote dissolute and careless habits of indolence amongst the poor, but that its effects are to encourage the increase of the population beyond the means of providing support, and consequently to introduce, upon a worse and more extensive scale, that distress and famine which it was its first object to prevent. These he seems to consider as necessary evils against which we cannot provide, and which may be compared to the thunder storm and the hurricane, which tho' they lay waste for a time the spot on which they expend their fury, yet tend to purify the air and to correct the stagnation of the waters, and in the end are the means of diffusing fertility upon the earth. He seems also to consider the legislature that attempts to prevent, in all cases, the occasional miseries of absolute want amongst individuals, by which nature has provided a check against excessive population, much about as wise as he would be who should first sow his seeds with extravagant profusion in a small flower-bed, and when they are grown up in clusters too thick to come to maturity,

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\* See particularly *Blackstone's Commentaries* and *Adam Smith's Wealth of Nations*.

should check the hand that endeavours; by thinning them here and there, to give them room to grow.\*

Upon the morals of the poorer classes of society, the influence of the *poor laws* has, by many, been considered as an increasing evil: It is said, and perhaps with justice, that they tend to depress the spirits, to check the energies, to abate the industry of the poor; that they confound vice, misfortune, and natural imbecility, in one common class; and that they are inadequate to the purposes for which they are intended. Upon the principles of Mr. *Malthus*, we should be led to believe, that compulsory provision is wholly improper; and when we see the large sums which are expended on public charities, by voluntary contribution, even after the *millions* that are raised for payment of the poor's rates, we may question, not only whether it is effectual, but whether it is at all requisite.

In fine, the humane object of the poor laws cannot be disputed; but, it is obvious that they were originally provided upon a case of emergency, when for a time the ordinary refuge of indigence, in the religious houses, was destroyed, and when it does not seem to have been thoroughly considered whether the same system of voluntary provision might not have been continued in another form, after some immediate relief had been supplied. And on the whole, it is questionable whether it is not more proper, in case of a duty of imperfect obligation, as this of *charity* certainly is, to leave the naturally benevolent propensities of mankind more to their ordinary course, though perhaps not entirely so; rather than to afford excuses for the deficiency of individuals in the exercise of private charity, and to remove one of the grand incitements to industry, which nature has provided in every free state of society, by placing, at the one end of the

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\* By this statement we perhaps do injustice to Mr. *Malthus'* arguments. They are certainly founded upon these principles; but, so stated, they appear most unfeeling and inhuman. He, however contends throughout his work, that were nature in the encouragement of population left to herself, the moral check which is imposed by the fear of the famine and misery which are the consequences of overgrown population, would prevent the improper increase of population itself, and thus these scourges of man would be less frequently visited upon us.



scale of unequal ranks, wealth, honour, dignity, and the affluence wherewith to be charitable, as the reward of successful toil ; and, at the other, distress, misery, want, famine, and death, as the furies, who with whips of scorpions, drive men from the haunts of indolence, and compel them to be vigilant, prudent, and industrious.

If in this view of the subject the impugnors of the poor laws should be charged with cruelty, let it be remembered, that, from the utmost extremity of distress it is hoped, the benevolence of individuals would afford relief ; that there was a time when the system had no existence in this country ; and that the poor of other countries are not supported by compulsory taxation. Even in our own country, the *quakers* voluntarily support their own poor ; and in *Scotland*, though there are provisions for the support of the poor, yet we are informed from the most credible authority, that it has been decided that *there is not in Scotland any law in force by which an involuntary poor's rate can be established in any parish* ; and we trust, we shall not be supposed to mean any unjust censure upon a numerous body of our fellow-subjects, when we take leave to remark, that, for *industry, care, parsimony, and worldly prudence*, they are almost proverbially noted.

What may be the merits of any particular alteration in the system of the poor laws, we shall not presume to determine. We beg our readers to consider us as having only laid before them a brief state of the question which we venture not to decide. But that the poor laws want some revision seems to have been admitted by the proposal which was some few years ago, made in the house of *commons* by the *minister*, to bring in a bill for their revision ; for which purpose returns of the assessments and other material points of information have been made to parliament. By these it appears that what would not readily be done from the mere review of principles, will perhaps be effected by state necessity ; and they who apprehend that nations may fall, like individuals, by being incumbered with too large expenditures and too heavy debts, may soon reasonably expect a revision of that system of laws, by which a sum equal to the *peace establishment* of the army, for the year preceding the present war, (about six millions of money), is annually raised for the support of the poor, independently of the aids given to industry by benefit societies, and to sickness and calamity by charitable institu-

tions, not to speak of the still disgusting excrescence upon society, the public mendicants, all of which are not included in the poor rate.

On this subject we have expatiated perhaps too much for the nature of our work, but whatever doubts may arise upon the poor laws, as a system, we beg leave to say that a practice has of late years been adopted in the execution of them, which however well intended originally, may lead to much mischief, and greatly aggravate the inconvenience of them in particular cases: we mean the practice of establishing what are called *select vestries*.

Where these institutions are designed solely to obviate the inconvenience of very large and indiscriminate meetings of vestries, in large and populous parishes, where the election of the *guardians* of the *poor*, or other officers to stand in the place of *church-wardens* and *overseers*, is left to the parish generally, and where provisions are made, by requiring securities, to preserve the public money from hazard by the failure of collectors, it is obvious that they tend to correct an occasional defect, in the existing poor laws; but if it should happen that instead of the parish vestry, a corporate body of a certain number of individuals, not elected by the vestry, is appointed for life, with power to elect their successors, and to have the raising of the poor-rate, and if by taking away the necessity of passing accounts publicly before justices, and by throwing various obstacles in the way of appeals against the accounts of the guardians, the security of the public money is diminished, they are likely to become grievous and oppressive jobs; and we cannot help thinking them a miserable departure from the true spirit of the poor laws, and of the constitution also, the spirit of which is apparent throughout the general poor laws, in levying the *tax* called *the poor rate* by the inhabitants themselves in vestry.

We beg leave also to suggest to those who may hereafter be called upon to consider such subjects, that, perhaps, the wisdom of the legislature was never better displayed than in the provisions which have been made by the 43 Elizabeth, c. 2, for the due and fair administration of the funds destined for the support of the poor. By that statute, the rate is to be made by the overseers and church-wardens, who are chosen annually, the former by the justices, ordinarily with the approbation of the vestry,

and the latter by the vestry alone. These persons are to account annually before two justices, and their expenditures are subject to strict revision upon appeal.

By this means those who are to pay have the making of the assessment, and the controul over the disposition of it; and those to whom the immediate management of it is intrusted being ordinarily men in the middle ranks of life, neither above the reach of censure nor below the feeling of respect for character, and being only raised to an office of trust for a short time, soon to return into the ranks of their fellows, before whom they are to account, and by whom, in turn, they will themselves be assessed, have not only every motive to secure their integrity in the administration of the trust, but have also but too little experience in the arts of official intrigue to be enabled even to attempt it. Thus it has happened that however occasionally the funds raised for the poor have been misapplied through mistake and ignorance, and although part of them, may have been lost by the failure of collectors, yet perhaps there never was so large a sum raised under any system in which there has been so little of positive fraud and abuse practiced by those who have had the distribution of it.

We are almost ashamed to have entered so much into the consideration of the general subject as to have lost sight for a while of the work before us; for which as far as it will tend to smooth the path of the student in the acquisition of the knowledge necessary for the practice at the quarter sessions, and also to assist the magistrate in rendering himself capable of performing that laborious part of his duty which is imposed upon him by the poor laws, we think the profession and the public are very much indebted to Mr. Nolan.

The plan of this work differs wholly from that of Mr. Bott, lately so much enlarged by Mr. Const, and which is now in general use as a book of reference at every court of quarter sessions, in the kingdom. That it does so we think a great recommendation of it; for we have often wished to see concise and elegant treatises on the law take place of those partial *collections of cases and digests* of reports which have been formerly published again and again under the titles of law of this and law of that, without regard to the pocket or the taste of the student, but solely for the convenience of the bookseller. Such books have in general so little merit in our opinion, that they may as

well be compiled by the *bookseller* and his *shopman* as by a barrister or student of the law; and we have been told, upon authority on which we believe we can rely, that such a book has been published ere now under the name of a barrister, when in fact it was manufactured by a literary drudge who did not even shew him the copy till it was printed.

Not that we mean to apply these censures to such a work as the last edition of *Bott* by Mr. *Const.* That work is, perhaps, an exception, as is Mr. *Cookes' Bankrupt Laws*, to the whole class of partial compilations of reports; and great as is the merit of the present work, we believe it will never supersede the use of such a collection at *sessions*. For as it contains all the cases and *judgments* upon the *poor laws* at length, it will always be necessary as a book of reference, instead of the whole series of reporters, which would be a very cumbrous, though a necessary appendage to the court of *quarter sessions*, for the purpose of ascertaining with accuracy the exact import and effect of those cases which may be cited and relied upon by the counsel on either side. On the argument of a point of law at sessions, it is unsafe to depend wholly upon the abstract of any writer, however skilful; the case will be recurred to by both parties; the facts will be sometimes misapplied; and the law can only be ascertained by examining the whole case, which will be found in Mr. *Const's* book more conveniently than in the volumes of reports from which it is copied.

In every other point of comparison we prefer greatly the present work of Mr. *Nolan's*; to any that has hitherto been published. It is comprehensive, methodical, and clear. The cases are stated sufficiently at length, yet not with all the amplitude of the works alluded to; and the whole is conveyed in such a style as to be not only always intelligible but to be readable throughout—a qualification which is no small recommendation, when we consider the importance of enabling magistrates to acquire a competent skill in the poor laws for the duly administering of their office, and also the extreme difficulty of reading through a crude heap of cases.

Mr. *Nolan* thus unassumingly exposes his view, in the performance of his undertaking, which we think he has fully satisfied.

“The importance of that system of our laws, which respects the civil economy and comforts of the poor is

so obvious, that it is hoped an attempt to offer some facilities to the persons concerned in the administration of them, will be received with indulgence.

"For this purpose, it has been thought convenient, instead of giving the numerous cases on every branch of the subject, to reduce the substance of the decisions into the form of a treatise. The words of the judgment of the court are preserved as much as possible, but it is disentangled from those circumstances of an individual nature, which could be of no use in illustrating the principle upon which the determination is founded. When, however, a more minute statement of the case seemed necessary, it has been given in the language of the report.

"The present work differs, not only in its outline, from those of Dr. Burn, and Mr. Const, but also in its general arrangement; and it will be found to treat of some subjects, which are either omitted altogether, or but slightly touched upon in those valuable productions.

"The object has been not only to unfold the theory and doctrine of the law, but to supply in some degree the want of personal experience, by pointing out the manner in which that theory is to be applied in practice. The mode of proof necessary to establish the different kinds of settlement is set forth with some minuteness; and such a general statement is given of the manner of conducting appeals before courts of quarter sessions, as is consistent with the various rules of practice, which are different in different courts. An account is likewise added of the practice on the crown side of the court of *King's Bench*, as it respects the orders of magistrates removed thither by *certiorari*.

"A few cases connected with the subject of this work, have been determined in the court of *King's Bench*, since it was committed to the press. They are annexed, with references to those pages in each volume to which they generally belong, and will be found to include the decisions of last *Michaelmas* term, taken from a manuscript copy of Mr. East's notes, which he kindly furnished for the purpose."

The introduction of the additional chapter on subjects of practice, and on the evidence necessary to support each settlement in proof, is, we think, very judicious, and an attention for which the junior part of the profession will be greatly indebted to Mr. Nolan. On this head it may

be not improper to observe that the work of the present writer by no means lies open to the objection which is often raised against law books, that they are commonly written before the compilers have attained much knowledge or skill themselves, and are often not more treatises for the instruction of others than for the authors themselves; insomuch so that it was remarked by *Johnson*, an excellent judge of literary merit, and well versed in all the secrets of the book trade, that treatises were hardly ever written in any art by men after they had attained to eminence in it; but that even *Grotius* and *Blackstone* compiled their works before they had begun to practice. In this respect the present author has perhaps better claims to the attention of his readers than had these excellent masters. He is already not unknown to the profession by an edition of *Strange's Reports*; and where he treats of the practice of sessions, he has all the advantage of that knowledge of his subject which actual practice can give him.

By way of exemplifying Mr. *Nolan's* manner of treating his subject, we shall extract two sections on distinct subjects from the first and second volumes; the one connected with the history of the poor laws, which will tend to elucidate some of the observations above on the general system of the poor laws, and the other relating to the practice of sessions upon appeals, which will also fall in aid of our concise view of the practice of the quarter sessions in a former number. These, we trust, will justify our recommendation of the work to such of our readers as are desirous of being thoroughly acquainted with the *English system* of the poor laws; and with these we shall conclude.

#### VOL. I. CHAPTER I.

#### *Of the Manner of providing for the Poor previous to the statute 43.1 Elizabeth, cap. 2.*

"The duty of maintaining the poor is said to have devolved upon the clergy for some ages after the introduction of christianity into *England*. Originally a fourth, and afterwards a third of their tithes was devoted to this charitable purpose, and administered by the incumbent under the superintendence of his bishop.\* The churchwardens and principal inhabitants are supposed to have

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\* Kennet. Impropr. 14, 15, 1 Black. Com. 359. Burn's Hist. of the Poor Laws, 1 &c.

taken some share in making a judicious application of this parochial fund.\* But if such interference ever did take place, it was by the rector's permission, for they had no power to direct the expenditure, or controul the mis-use.

"The period is not ascertained at which this portion of tithes was applied to other purposes. We may conjecture that it was gradually re-assumed, from the increase of monastic institutions. The principal or rectorial tithes of many parishes, being appropriated to the use of religious orders, they undertook a share of the burthen, as they retained the funds originally set apart for the poor's support.

"The legislature did not interfere with this appropriation of the ecclesiastical revenues, except in a solitary instance. In the 15th of *Richard* the second an act passed requiring "that in every license to be made in the Chancery of the appropriation of any parish church, it shall be expressed that the diocesan shall ordain, according to the value of such church, a convenient sum of money to be paid and distributed yearly, of the fruits and profits thereof, to the poor parishioners, in aid of their living and sustenance for ever."†

"Until the first attack made upon monastic property at the dawn of the reformation, the clergy were permitted to deal with their revenues in other respects according to private discretion, the statutes of those by whom ecclesiastical corporations were founded or endowed, and the superintending controul of their superiors. Several statutes passed between these periods to regulate the internal œconomy of religious houses; but they were directed to a different object: to ease them of oppressive visits from the great, and a tributary hospitality exacted by the powerful, which absorbed their revenues and usurped the portion of charity and the dues of the indigent.‡

"The alms given by these houses, together with hospitals and other institutions founded and endowed for the

\* 3 Burn. tit. Poor.

† Chap. 6. enforced by 4 Hen. IV. chap. 12.

‡ 3 Edw. I. chap. 1, 35 Edw. I. st. 1. c. 1. 9 Edw. II. stat. 1. c. 11. 5 Hen. V. c. 1.

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purpose, constituted the chief but not the sole resources of those who fell back upon their fellow-creatures as unable to sustain themselves.\* The effects of persons dying intestate were vested in the ordinary, to be applied, among other pious uses, to relieve the poor of his diocese; and private charity derived vigour and energy beyond the common impulse of humanity, from the superstitious notion that prayers purchased by donations to the poor, contributed to the eternal happiness of the dead.

"The aged and impotent poor had no other sources of support, until the reign of *Henry VIII.*; for since the conquest, neither the common nor statute law made any direct provision for the purpose, unless permitting the poor to beg by license can be deemed an exception.

"The author of the *Mirror* states indeed,† that by the common law, "the poor were to be sustained by parsons, "rectors of the church, and the parishioners, so that none "of them shall die for default of sustenance." But no method is pointed out by which the performance of this duty could be enforced, or its omission punished.‡ Such abstinence from regulation on the part of our civil government, is no slight testimony that the clergy devoted a sufficient portion of their immense property to discharge their trust.¶ If any objection can be made to their conduct, it is, that their charities were lavished with inconsiderate humanity, detrimental to the industry and police of the country.

"The various and highly penal laws made during this period against vagrants and sturdy beggars,§ a descrip-

\* Perk. sect. 486.

† Mirr. sect. 1. c. 3.

‡ 1 Black. Com. 359.

¶ A third, and some say a greater proportion of the entire property of the kingdom was vested in the clergy at the time of the conquest, and in the reign of Richard II. they held a fourth. At the commencement of the reformation, the regular or monastic clergy are calculated to have possessed what amounted to a fifth of the revenues of the kingdom. See 2 Burn's Ecc. Law. tit. Monasteries, and the authorities there cited.

§ See them collected, Burn's Hist. of the Poor Laws. chap. 3, p. 22.



tion of persons who sprung from and were nourished in their way of life by the largesses of misguided piety, gives some countenance to this opinion.

"But a more direct proof of the fidelity with which the clergy administered the trust reposed in them, arises from observing, that the first legislative attempt to provide for the impotent poor, was made in the very year when the property of the religious houses was vested in the crown. The first great act of dissolution, 27 Hen. VIII. c. 28, affords a decisive testimony, not only of their hospitality, but of their efforts to promote the industry of the country. It enacts, that all persons to whom the king shall demise the sites and demesnes of any of the dissolved houses, shall keep an honest continual house and household there; and for that purpose occupy yearly as much of the demesnes in plowing and tillage of husbandry, as the said religious had done before, on pain of 6l. 13s. 4d. a month, and the justices in sessions were to inquire thereof. This regulation continued until 21 Jac. I. when the clause was repealed.

"The 27 Hen. VIII. c. 25, contains the first provision by which particular districts are directed to support their poor, so that none of them of very necessity shall be compelled to go openly in begging. The act was enforced by a trivial penalty of 20s. per month. Many schemes were proposed and enforced by subsequent statutes to accomplish this object.\* They are collected in the fourth chapter of Dr. Burn's History of the Poor Laws, and it is sufficient for the present purpose to point out their general tendency in the words of that respectable author.

"It is curious," (says he)† "to observe the progress, "by what natural steps and advances the compulsory "maintenance became established. First, the poor were "restrained from begging at large, and were confined to "beg within certain districts. Next, the several hundreds, towns corporate, parishes, hamlets, or other like "divisions, were required to sustain them with such cha-

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\* 12 Ric. II. c. 7. 11 Hen. VII. c. 2. 19 Hen. VII. c. 12. 22 Hen. VIII. c. 12. 27 Hen. VIII. c. 25. 1 Edw. VI. c. 3. 3 and 4 Edw. VI. c. 16. 5 and 6 Edw. VI. c. 2. 1 and 2 Ph. and M. c. 5. 5 Eliz. c. 3. 14 Eliz. c. 5.

† Ch. 5. p. 105.

“ ritable and voluntary alms, as that none of them of necessity might be compelled to go openly in begging. And the church-wardens, or other substantial inhabitants, were to make collections for them, with boxes on Sundays, and otherwise by their discretions. And the minister was to take all opportunities to exhort and stir up the people to be liberal and bountiful. Next, houses were to be provided for them by the devotion of good people, and materials to set them on such work as they were able to perform; then the minister, after the gospel every Sunday, was specially to exhort the parishioners to a liberal contribution. Next, the collectors for the poor, on a certain Sunday in every year, immediately after divine service, were to take down in writing what every person was willing to give for the ensuing year; and if any should be obstinate and refuse to give, the minister was gently to exhort him; if still he refused the minister was to certify such refusal to the bishop of the diocese, and the bishop was to send for and exhort him in like manner; if he stood out against the bishop's exhortation; then the bishop was to certify the same to the justices in sessions, and bind him over to appear there: and the justices, at the said sessions, were again gently to move and persuade him; and, finally, if he would not be persuaded, then they were to assess him what they thought reasonable towards the relief of the poor. And this brought on the general assessment in the 14th year of *Queen Elizabeth*.”

“ This statute underwent some modifications during the government of that excellent princess.\* But in the 43d year of her reign,† another act was framed upon those which had passed previously. Under this statute, with a few alterations to be noticed hereafter, the fund for setting the poor to work, and maintaining those who are unable to do so, is raised at this day.”

VOL. 2, CAP. 35, SECT. VI.

#### *Of adjourning Appeals.*

“ **APPEALS** are usually adjourned to the sessions ensuing that at which they are lodged, on account of the insufficiency of notice. But an adjournment sometimes takes place under other circumstances, notwithstanding the

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\* 18 Eliz. c. 3. 35 Eliz. c. 4. 39 Eliz. c. 3. c. 4. c. 5. c. 21. c. 2.

words of 9 Geo. I. c. 7. and 17 Geo. II. c. 38, that the justices shall, after an adjournment to the next sessions, *for want of reasonable notice*, "then and there finally hear and determine the same;" for these acts seems to confine their direction to cases where the adjournment is had on that account only.

"This construction seems established by direct decision;\* and the practice of the court of *King's Bench*, in directing courts of quarter-sessions to enter appeals, and continue them by fictitious adjournments, admits them to have that power, since these statutes, which they possessed before.†

"Appeals may therefore be adjourned, by consent of parties,‡ upon assigning a sufficient reason to induce the court to consent; such as the absence of material witnesses, beyond the reach of legal process to enforce their appearance; the pauper having run away, and the like.

"The *justices* likewise possess a power as inherent to their jurisdiction, to adjourn them at discretion. Thus they may well adjourn an appeal upon debate, for further consideration.§

"So they may adjourn it where the *justices* are equally divided in opinion; and it is said, that their being so divided is a sufficient warrant for the clerk of the peace to enter an adjournment, and that it is his duty so to do.¶

"They may likewise adjourn it, for the purpose of submitting a question in the case to the judge of assize.¶¶

An adjournment of a sessions is not to be to a time be-

\* *Rex v. Stansfield, East*, 16 Geo. II. An adjournment of an appeal against an order of removal. Burr. S. C. 205. 2 Bott. 724, pl. 812.

† *Rex v. Langley*, 11 Wil. III. 1 Ld. Raym. 481. 2 Bott. 723. pl. 806. And as to the practice, see *Rex v. Justices of Buckinghamshire, ante*, 288, and *post*. (n. 2.)

‡ Consent of parties, given by themselves or their attorneys, binds them in subjects of appeal, and prevents their setting aside in the superior court what has been done under it. See *Rex v. Justices of Northampton, Cald.* 30. 2 Bott. 708. pl. 776. *Rex v. Natland, Burr. S. C.* 796.

§ *Rex v. Langley, ante*, 304. (n. 2.)

¶ *Bodmin v. Warlign, 2 Bott.* 726. pl. 815.

¶¶ *Rex v. Hedingham, Burr. S. C.* 112. 2 Bott. 724. pl. 811. *Rex v. Justices of Westmorland, ib.* 726. pl. 816. *Rex v. Natland, Burr. S. C.* 793.

yond that fixed by 2 Hen. V. c. 4. for holding another original sessions;\* but they may respite an appeal to an adjournment of the same sessions; and determine it there.†

“ If there are not *justices* enough to hold a sessions, there are not enough to adjourn it legally; and every act done after such adjournment is void.‡

“ Except the appeal is properly adjourned, the ensuing sessions have no jurisdiction to hear and determine upon it;§ and if it does not appear, upon the caption of the order of sessions, to have been regularly respited, by continuance or adjournment, the court of *King's Bench* will quash the order of sessions as void.||

“ But as a neglect to enter the respite of an appeal, after it has been ordered, is an omission by the court or its officer, and no fault in the appellant, it seems hard if he is to be deprived of redress, by an error in which he has no share.

“ In an appeal from an order of removal, the *justices* were divided in opinion, and no adjournment took place; but an entry by the clerk of the peace, that the appeal was lodged, and nothing done upon it, one of the *parishes* gave fresh notice of appeal, when the *justices* proceeded in it, and quashed the order. The court of *King's Bench* declared, that “ if the parties will not consent to quash both orders, we will consider whether we cannot send it down, to have the entry of the first order amended.” They afterwards quashed the order of sessions, because made without adjournment; but no opinion was given.¶

“ But in another case, where doubts arose on the hearing of an appeal at the *Christmas* sessions, and there was a reference to the opinion of the judges who should come the next *Northern* circuit. The judges came after the ensuing *Midsummer* sessions, and nothing more was done

\* *Rex v. Grince*, 2 Bott. 723. pl. 807.

† *Rex v. Stansfield*, Burr. S. C. 205, *ante*, 304, (n. 1.)

‡ *Rex v. Westington*, 2 Bott. 725. pl. 814.

§ *Rex v. Hedingham*, Sible, Burr. S. C. 112. 2 Bott. 724. pl. 811. *Rex v. Polstead*, 2 Str. 1262. 2 Bott. 725. pl. 813. *Rex v. West Torrington*, Burr. S. C. 293. 2 Bott. 715. pl. 797. *Bodmin v. Warligen*, *ante*, (n. 2.)

|| *Ut s. 7*. As to the necessity of entering continuances in the caption of the order, see *post*.

¶ *Bodmin v. Warligen*, *ante*, 305, (n. 2.)

at the *Christmas* sessions, i. e. the appeal was not adjourned. The parties producing different states of the case in the assizes, the judges did nothing. A mandamus was moved for to the *justices* to proceed to hear and determine this appeal. The court inclined to grant the mandamus, if the *justices* would not proceed, but enlarged the rule for further consideration.\*

“Lastly, where an appeal against an order of removal was regularly lodged at the *Michaelmas* sessions, 1767, at *Petworth*, and the *justices*, upon hearing the cause, conceiving a doubt, ordered a special case to be made for the opinion of the court of *King's Bench*. The counsel withdrew in order to settle the case, but before they had come to any agreement, the sessions was inadvertently adjourned, and this cause was neither retained nor ended. Upon these facts an application was made to the court of *King's Bench* for a mandamus, to compel the justices to proceed in the appeal.—By the court: When the justices entertain a doubt, they may, without the consent of the parties, order a special case to be made. When the *justices* say, as they did here, that a special case shall be made, they virtually say that the cause shall be adjourned over till a new case is made; and therefore the want of an adjournment, or a respite, is merely the omission of the clerk, and may at any time be supplied. Let a mandamus go immediately, unless the respondents will consent to a case.†

#### SECT. VII.

#### *Of hearing Appeals.*

“THE form of proceeding upon the hearing of appeals, is regulated by the practice of each particular court of sessions. It usually differs but little in the case of orders of removal, or poor's rates.

“Appeals are heard in the order in which they are entered with the clerk of the peace, unless for some special reason submitted to the court. The first step in all cases, after an appeal is called on, is, that the appellant shall prove his notice, unless it is admitted.

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\* *Rex v. Justices of Westmorland*, 29 Geo. II. 2 Bott. 726, pl. 816.

† *Rex v. Justices of Sussex*, 2 Bott. 745. pl. 833.

"Where the appeal is against an order of removal, the parish should produce the original order, if it has been served upon them.\* They should also have the pauper present, if he has been delivered to them, or be able to shew that his absence is not through their fault or contrivance.†

"After these preliminary steps, the respondent's counsel begin to open the case,‡ and establish the order of removal.§

"In an appeal against a poor's rate, if the ground of complaint be that the appellant has no rateable property in the parish, the counsel for the respondent begins in like manner to establish possession of some property in the appellant, for which he is liable to be rated, before the other side is called upon to refute it.¶ The reason assigned for this rule by the judges is, that those who have done the act ought to establish the propriety of it by evidence.

"But as the appellant, in all other instances, makes certain *substantive* objections to the rate by his notice, it is the practice, in many counties,¶ to call upon him to make them good, before the court obliges the respondents to defend their rate. Where the practice is so, the appellant's leading counsel opens the case by stating the causes of complaint; but he is obliged to confine him-

\* If only a copy of the order is served, or the paupers are removed under a justice's warrant, (see *ante*, 157. sect. v.) the appellants should serve the removing parish with notice to produce the order at the hearing, and the justice to return that which is in his possession,

† It is usual to serve the appellants with notice to produce them. But *quære*, whether it is not the safest practice to subpoena them as witnesses, where they are to be used as such?

‡ *Per* Lord Kenyon, C. J. *Rex v. Newbury*, 4 Term. Rep. 475. 1 Bott. 288. pl. 279.

§ But different sessions vary in this part of their practice. Thus, at the Surrey sessions, if the respondent prove to the court's satisfaction, that the pauper cannot be found, the appellant begins, as he does likewise at the Gloucester sessions, if the order appears on the face of it to have been made on the oath of the party removed.

¶ *Rex v. Newbury*, *ante*, (n. 2.)

¶ As Surrey, Kent, and Yorkshire, &c. *Rex v. Newbury*, 4 Term. Rep. 475. 1 Bott. 288. pl. 279.

self to such as are sufficiently set forth in the notice, unless he obtains the consent of the other side to go beyond them.

"The respondents are then called upon to put in the rate, and prove the allowance and publication, where it is not admitted, either expressly or virtually; by not being included in the notice as a ground of appeal.

"If the parish officers do not attend, or refuse to produce the rate, the court may proceed in the hearing, provided notice has been given to produce it; and an attested copy of the rate may be then read in evidence."\*

"The service of notice to produce a rate is good after the sessions are commenced.† Every inhabitant is entitled, under 17 *Geo. 2*, c. 9. s. 2 & 3, to inspect every rate, at all reasonable times, paying 1s. for the same, and to have upon demand forthwith copies of the same, or any part thereof, paying at the rate of 6d. for every twenty-four names, under a penalty of 20l. to be forfeited by the church-warden or overseer, not permitting such inspections, or refusing or neglecting to give copies.

"The evidence for the appellant is next produced; and after the written testimony has been read by the clerk of the peace, and the witnesses‡ sworn, examined, and cross-examined, the second counsel for the appellant sums up, and applies the matters proved to the question of law or fact which the court are to decide.

"The leading counsel for the respondent then states his case in answer to that of the appellant, brings forward his evidence in the same manner, which is likewise summed up by the counsel next him in succession; and finally, the leading counsel for the appellant replies upon the whole case.

\* See *Rex v. St Helen's in Abingdon*, 1 Bott, 266. pl. 263, where this was done, and no objection taken.

† Decided *ib.*

‡ For the general rules respecting written evidence, see *ante*, Vol. I. 375. *et seq.* Vol. II. 12, *et seq.* As to the competency of witnesses, *ante*, Vol. I. 301, *et seq.* and *Rex v. Kirdford*, 2 East. 559. Subpœnas, to compel the attendance of witnesses, are issued by the clerk of the peace, and also from the crown office. But where the witnesses live in a different county, the crown officer alone can issue the subpœna.

"The proceeding is similar in appeals against orders of removal, excepting, that as the respondent begins, so he closes the case where evidence is called on both sides. But in all sorts of appeals, if the party who states his case last calls no witnesses, his junior counsel has no right to address the court; and he who leads for the adversary is debarred of reply.

"In an appeal against an order of removal, the inquiries shall not extend on either side beyond the time when it was made; for the justices should not quash a good order upon matter which happens *ex post facto*.\*

"If any difference arises respecting the admissibility of evidence, it is decided by the court. But no bill of exception lies against their opinion.† For, in the common case of a bill of exception tendered to the judges, the jury alone are the proper persons who would be to decide whether they believe the evidence or not; the judges have nothing to do with the belief of the evidence; they are not to determine on its credibility, but upon the consequence of law arising from it. But the justices at sessions are judges of the fact as well as law; they are the jury as well as judges; it is in their breast only, whether to believe or disbelieve the evidence; and who is to take upon himself to say what portion of evidence they do believe, and what they do not? Suppose six of the justices believe the evidence, and two of them do not believe it, are the two to conclude the six as to belief of the fact? When the justices specially state the fact, it is the act of the whole court.‡

"If, however, they refuse to receive evidence, which they should have admitted according to the rules of law, the court of King's Bench will grant mandamus to compel them to receive the evidence, and re-hear the appeal.§

\* Per Page J. *Rex v. Widworthy*, Burr. S. C. 139. 2 Bott, 469. pl. 489.

† *Rex v. Preston*, Burr. S. C. 77. 2 Bott, 705. pl. 772.

‡ Per Lord Hardwicke, C. J. *ib. n. a.*

§ It is in such cases the most convenient way for the justices, as well as the least expensive for the parties, to state a case for the opinion of the superior court, when they are so requested, provided the point admits of doubt.



*THE SPIRIT OF THE BANKRUPT LAWS, or Bankrupt and Creditors' Assistant with Observations. By JOSHUA MONTEFIORE, Solicitor, Author of the Commercial Dictionary, &c. &c. Statutes relating to Bankruptcy, Orders for regulating the Proceedings, and Rules and Examples for the last examination. London, printed for the author, and sold at No. 25, FINCH LANE, Cornhill.*

THE author of this work has frequently appeared before the public already, as may be seen by the above title page and we cannot help congratulating him upon his great success in an art which was never better understood than at present, the art of *book-making*. A great book was formerly called a great evil, when great books contained something, and were charged at a moderate price for the labour which was necessarily bestowed upon them both by the author and the printer. Now we have great books, at great prices, in which the chief labour is bestowed by the paper-maker and the binder, and in which there is a plentiful lack of printing, and a superabundance of margin. Of the prevailing taste for ostentatious printing, and fine paper, the author has taken great advantage; his paper is of the largest royal octavo, his pages contain the smallest quantity of printing that we ever saw in a law book of the same size, and his margins are so large that as his work contains no reference to a single authority, we presume, he must have enlarged them in order that his readers may insert a running commentary on the whole. And for 192 pages of this sort, with not quite a *hundred* more of statutes, more closely printed, he charges 13s. and, lest the price should be mistaken, affixes it to the back of every copy. As he is a solicitor, we should advise him in the next edition to add *fourpence* more to it, in order to make up a complete fee; or else, to have some mercy on the pockets of *bankrupts* and *creditors*, and to reprint the whole with emendations in a moderate size at a moderate expence of a few shillings; by which we should think he would himself be a considerable gainer.

The work on the whole contains a pretty fair, but brief summary of the bankrupt laws, which it is too probable, bankrupts in the hour of their distress may be more inclined to peruse than the more complete *Treatises* of Mr. Cooke and Mr. Cullen, which are in the hands of every lawyer,

and the use of which it were vain to suppose could be superseded by such a publication as the present.

As we are persuaded that the perusal of a brief treatise upon such a subject might, as the author suggests in the preface, enable bankrupts and creditors the better to understand their own affairs, and to lay their cases before their professional advisers with more discretion, we should have been willing to have applauded Mr. *Montefiore's* design the more had the appearance of his work been less ostentatious and assuming. At present, we shall only add, that our advice to him as above we have given in purity of spirit, and from the duty which we feel that we owe to our readers: and as we presume he can have no objection to be tried before them by exhibiting a specimen of his work, we shall extract some of his concluding observations, in which he offers some advice for the improvement of what he styles "*the administration of INSOLVENT JURISPRUDENCE.*"

After some introduction concerning the impropriety of arrest upon *mesne process*, and a history of the statutes upon that subject from *Magna Charta*; and after observing upon the extreme rigour with which bankrupts were treated, he says with some affectation, "so cruel a code could not long exist; *the comet had reached the extreme point of its aberration; and, at length, began to approximate to the centre of that system from which it had so far receded.*"

He then condemns the severity of the law which makes it a capital offence to secrete effects of more than 20*l.* value. A severity which he perhaps justly thinks defeats its own object, and is imposed without regard to the gradations of guilt and the due adaptation of punishment to nascent turpitude or habitual depravity; but imposes upon a first and only offence the severest punishment. He then offers in conclusion, the following correctives to the *Spirit of the Bankrupt Laws*, with which we also shall conclude without comment; more especially as his work is dedicated, with permission, to the present high and enlightened *chancellor*, in whose peculiar care the administration of these laws is placed, in whose hands they must be justly and ably administered, and by whose wisdom in assistance of the legislature, we are persuaded that any improvement of the system will be best supplied.

"The law for the recovery of debts, under the estate of a bankrupt, should put the insolvent, as nearly as possible, on an equal footing, with regard to his debtors and creditors. At present, when a man finds a creditor bankrupt, he knows that the debt will not be soon, if ever demanded, the assignees having been often unwilling to run the risk of suits, on account of the attendant expenses. A bankrupt's estate should be free from law stamps, as the sale of the estates are from auction duty; a penalty should be attached to a debtor, against whom a recovery is made, under the estate of a bankrupt, if a fraud can be proved, and certified by the judge before whom the cause is tried, as there is evidently a great degree of criminality in resisting a demand made under such circumstances.—This or similar regulations, would only counterbalance the advantage the defendant now has, if so inclined, of knowing that, in general, proofs of the debt are difficultly to be obtained, and that he can compel the assignees, in the first instance, to begin, by proving the Bankrupt a trader within the statutes; the act of bankruptcy, that the commission was regularly granted, the assignment to the plaintiffs, and property in the bankrupt."

"To persons disinclined to pay, these advantages are very great, inasmuch as recoveries are extremely difficult, and the unfortunate bankrupt is frequently branded with the name of an imprudent man, who has squandered his property by giving credit to persons unworthy of trust. This part of the business requires great attention, for the book-debts of a bankrupt often do not produce one quarter in the hands of assignees, that they would have yielded, had he remained solvent."

"It might therefore also be expedient to give the bankrupt a certain allowance on all book-debts recovered, in order to obtain his assistance; for this is different from the general allowance on the dividend, great part of which may arise from recoveries that are totally independent of his exertion. Were the bankrupt to be treated liberally, and with due attention, in case he conducted himself well, and assisted in making the most of the estate, a great and beneficial alteration would certainly take place.

"The value to the nation of the important description of men subject to the bankrupt laws, renders it highly proper that these laws should be framed and executed with a dignified regard for the character and comfort of the objects of them, but which should not give them any improper advantages over their creditors; such alterations therefore as might tend to produce these desirable objects are eminently deserving the consideration of the legislature."

"Though the law against fictitious creditors be, as we have seen, sufficiently severe; yet, if such creditors have chosen assignees, who of consequence are equally fictitious, such is the trouble and necessary expence of removing them, and so

much mischief may be done before they can be removed, that instead of the estate being in the hands of men interested in a good administration, it is often vested with those desirous of oppressing their unfortunate victim, careless of the interest of the creditors, and solicitous only for their own advantage. If assignees continue to be appointed as at present, the commissioners should have a controul over their nomination, as they should not be received until their circumstances and situation are approved; with them also should be placed a person to act officially, as hereinafter suggested; all monies should be payable or receivable only on their joint order or receipt, and the balance in hand should be paid into the Bank of England, where there ought to be an office appropriated for the purpose.

"There should be also particular offices for the purpose of the meetings, and the several proceedings should be inserted in books, to be kept in such offices; of these books there should be duplicates, at all times open for the inspection of both the bankrupt and creditors, with liberty to take copies or extracts; the scrutiny of all debts proved should be severe; and, when doubtful, the proof should, at all events, be put off until after the choice of assignees, that no speculation should be made thereupon, as at present.

"One great evil of the present system of bankruptcy, arises from those interested and intriguing men, who procure themselves to be chosen assignees, and, knowing all the power and advantages they enjoy, keep the creditors out of their money, to their own emolument.

"There are persons who make it their business to be assignees, which is effected in the following manner: they get into their hands some of the bills, or other securities of the bankrupt, make themselves very busy at the first meeting, openly pretending great zeal for the estate, and, in a private manner, promising the bankrupt that they will assist in getting his certificate, if they are chosen. To the solicitor, they promise not to change him; and by this means they procure a majority of the creditors at large, who being very little interested in the matter, and generally unacquainted with each other, act without concert, and become the passive instruments of those interested.—Many persons in London, and some that stand high in life, owe their rise to their being chosen assignees, having had large sums of money remaining in their hands, from unclaimed dividends, &c. &c.

"To remove this very injurious practice, and the inducement that leads to such steps, an assignee general should be appointed by the Lord Chancellor, vested with the same powers and authorities as assignees at present enjoy; under whose controul the assignees appointed by the creditors should act, and be accountable to him, and give proper security for all monies to be by them re-

ceived from the bankrupt's estate, which should immediately be paid into the Bank of England, in the name of the assignee general; a penalty should be attached on assignees retaining in their custody any sum of money belonging to the bankrupt's estate, exceeding the sum of £. ; a per centage should be paid to government on the dividends received, and all unclaimed dividends, which amount yearly to a considerable sum of money, should be paid to and become the property of government, if not claimed within a certain number of years.

"This would not only redress the evil arising from the improper choice of assignees, and the unfair advantage of which assignees avail themselves, but it would prevent the very nefarious, but common practice, already stated, namely, proving debts, not real, in order to have a vote in the choice of assignees, as the inducement to become an assignee would be done away.

A certain number of accountants should be attached to the bankrupt's office, to whose inspection the books of every bankrupt should be submitted, and the statement of his estate and effects, on his surrender, should previously be examined by one of the said accountants, and checked with the books from which the same was made. It would also be proper that every statement should have thereon indorsed the opinion of the accountant by whom it was examined, signed by him, whether approving or disapproving of it, for the inspection of the commissioners and creditors, on the day of the surrender. This would prevent, in a great degree, false accounts from being imposed on the commissioners, the oath being, in many instances (we are sorry to say), the least consideration; for the bankrupt, knowing that his statement would undergo the ordeal of the accountant's examination, and that his observations thereon would meet the eye of the commissioners and creditors, would be careful how he subjected himself to the animadversions he would justly merit if he in any manner deviated from the path of integrity. It would also be advisable, that before a dividend was made, the accountant should give in a short general report, or a particular one, as the nature of the case might require, of the debts proved.

"With regard to the certificate, creditors refusing to sign, should be obliged to assign their reasons, and if not good, the commissioners should be empowered to sign for them, thus personal enmity might never prevent an insolvent man from obtaining justice."

"One commercial man,\* of unblemished character, independent

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\* Perhaps, if the mode practised in Paris before the revolution, in the Court of Consuls, were in part adopted, it might be attended with great advantage. That Court consisted of twelve tried commercial men, of unblemished character, who had been at least thirty years in trade, and were inde-

circumstances, and mercantile knowledge, should be assistant to every list of commissioners but the same merchant should not always be with the same list of commissioners; thus all parties would be considerably benefited, by the assistance and control of a British merchant of intelligence and integrity.

"Although the preceding suggestions are the result of long observation and experience, the author, nevertheless, submits them with diffidence;—he humbly conceives that the alterations he proposes, and the attempt at amelioration which he has hinted may be productive of considerable improvement in our system of jurisprudence, as far as relates to the bankrupt laws. Aware, however, of the danger of too precipitate a reform, he has made the present code the basis of all the alterations and amendments which he has ventured to suggest. It will occur to the reader, that all those changes cannot be applied to bankruptcies in the country, but some of them may; and after the others are adopted and approved in London, there is no doubt but means may be found, of extending them also to the principal commercial towns in England."

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*The BANKRUPT LAWS, by WILLIAM COOKE, of Lincoln's Inn, Esq. Barrister at Law, in two Volumes. The fifth Edition, with considerable additions. Brooke and Clarke, Bell-yard, Temple-Bar. Crown Octavo.*

THE abilities of this writer have been long known to the public; we shall therefore only inform our readers that the additions are made with the author's usual care, and consist of the same sort of ample extracts, and abridgments of the reports as are characteristic of the former editions of the work, and make the whole a complete system up to the present time.

We should perhaps not have mentioned this work but that we know some are so eager to procure the *newest thing*, published upon every subject, that we feared lest, for want of information, that a new edition is published, a few of our readers might overlook a work of established merit, and be inclined to take up with any trash which bears the stamp of novelty, and promises to contain the latest cases.

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pendent in fortune; they presided without emolument; their patience to investigate facts, and their attention to the distribution of justice, was as far beyond example, as it was above praise. Honor was their reward: and to be capable of being a Consul, was, in commerce, reckoned equal to being a Commander of the Order of Merit."

Question concerning a Rule of Descent.

MR. EDITOR,

**V**ERGING towards the close of a long and active professional life, my chief source of amusement, now, is to examine, with more minuteness than heretofore I had sufficient leisure to do, some of those abstract questions which have never been satisfactorily solved.

The one which last occupied my attention has, I am free to confess, baffled all my endeavours to remove the *murky darkness* which conceals the *clue* by which alone we can get at the ground and principle of the point alluded to; but as some of your ingenious correspondents may, by the application of greater talents, be more successful (should you deem the question worthy of a place in your very amusing and instructive legal and juridical repository,) I take the liberty of requesting the insertion of it.

It is this:—"Upon what solid PRINCIPLE can the father of a purchaser be rejected in the descent from such purchaser, and the father's uncle or great uncle be received?"

There is a great deal to be met with in the books upon the subject, but in my opinion nothing in the least satisfactory as to the ground and solid reason of the rule.

I am Sir, your, humble Servant,

SENEX.

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BLACKSTONIANA.—GAME LAWS.—Of the Qualification to kill Game.—Of the Right to vote at Elections for the Shire, &c.

SIR,

**I** RECOLLECT, in one of your early numbers, you mentioned to have received from one of your correspondents, a suggestion for a legal *Ana*, or occasional remarks on the excellent *Commentaries* of Sir *William Blackstone*. This, if executed well, I have no doubt, would form a very useful miscellaneous article in your work;

and, therefore, I felt much regret that your correspondent, who furnished you with the hint, did not also supply you with materials for the executing it.

The plan of it admits of such latitude as to embrace all kinds of subjects. Not only may errors be detected and obscurities explained, but even his excellencies may be more strongly marked for the admiration of the student; and the antiquarian, the collector of anecdotes, the moralist, and the philosopher, the universal jurist, the pleader, and the conveyancer, may each in his proper way, throw in his contribution to the common stock of information; which every student might render more useful by a manuscript reference to it in the margin of the *Commentaries*.

Having a leisure half hour, and as an example is the most ready and intelligible of all modes of explanation, I now take up the *Commentaries*, and like an eager falconer determined to let fly at any game, I open them, by mere chance, at the *fourth book, chapter 13, page 175*; and a most appropriate subject it is, for it treats of the *game laws*, and the *qualifications* for killing *game*.

Considered abstractedly, I confess, that to me, the privilege of killing game, of hunting or shooting, seems not worth the preserving to any one, and betrays the weakness of man, and the paucity of his pleasures. There is nothing in either of them, intrinsically capable of giving any pleasure to a rational being, except that which may be derived from a hard ride in a fine morning, or a pleasant walk through stubble fields, copses, and woodlands; for I cannot do my fellow-creatures so much injustice, as to suppose that they really take delight in the agonies of the dying stag, the pantings of the breathless hare, or the crippled flight of the wounded partridge. As it regards society and civilization, nothing is more absurd and preposterous than a party of sportsmen sallying forth over the well-tilled fields of a highly cultivated country, to pursue for sport those occupations which are fitted only to an infant state of society, to a barbarism from which by far the greater part of Europe has for many ages been removed. Let the native of *Siberia* or of *Kamtschatka* pursue the chase in his barren regions, not for his amusement, but his subsistence; for clothing or for defence! In this he fulfils the designs of nature, and by exterminating a noxious race of animals, he prepatates



the land for habitation and agriculture; improves his skill in the rude arts with which he is acquainted; and displays a courage and adroitness, which must be reckoned among the necessary virtues of a savage life. But let the natives of *England, France, and Germany*, and, above all, the clergy, reflect that in the sports of the field they act the part of savages in an age of civilization, and are wantonly cruel for mere sport.

From various considerations one cannot help reflecting that laws which have for their object, the perpetuating of such pursuits in modern times, are misplaced, and that with the division of property, which tillage and civilization introduce, the wild fowl, or the unreclaimed animals, which are fed on the land, should be the property of the owner of the soil only which nourishes them; that the right of pursuing them into other grounds should be narrowed within certain limits, just such as are necessary for the taking of them; and that all manorial rights of game should be abolished.

But to return to *Blackstone*—he justly takes the policy of our game laws to be founded in the desire of “promoting the public economy of the commonwealth,” by preventing “low and indigent people from following pursuits which take them away from their proper employments and callings.” This is well: but to abrogate the system, and make game the property of the land owner, would be better. It would remove the temptation to the low and indigent altogether, and it would be the most effectual stop to the plunder of the professed poacher, who is a more baneful pest to society than even the smuggler.

Again, in enumerating the qualifications for killing game, or, as *Blackstone* more properly calls them, the *exemptions* from penalties for killing game, he mentions first, the having a freehold estate of 100*l. per annum*, and adds, “there being fifty times the property required, to enable a man to kill a partridge, as to vote for a knight of the shire.”

Whether or not the learned commentator meant this in censure of the law, as presuming that the qualifications should be equal, or the higher ratio on the side of the right of voting, I know not; but it has always appeared to me, that the observation is, if so, misplaced, and I be-

lieve it has frequently been misapplied, even in courts of justice. Not but that it is absurd, that a man should not be at liberty to catch a partridge in a net upon his own land; but that is an absurdity applicable to all *game laws*, which are an evident violation of property. But take the spirit of the game laws as you will, whether as a restraint upon the low and vulgar from following idle pursuits, or as a privilege given to the rich to trample over other men's fields, still the qualification is rightly fixed at so high a rate, or, if altered at all, ought to be raised still higher; for I am sure there is no one who will say, that a man of a less estate than 100*l.* a year in land, or an equivalent in personal property, is reasonably qualified to set up for an *adler*, to be legally permitted to wander "from his proper employment and calling" in pursuit of partridges; or, on the other hand, should be indulged with a license to place himself in a state of temptation, to become a trespasser on his neighbour's lands, a leaper of ditches, and a breaker of hedges, (at one knows not what cost,) in order to kill a solitary hare or shoot a few pheasants in the year. Surely, I say, no one would think it right to intrust every man who has 50*l.* a year in land, every voter at *Brentford*, with such a privilege.

But, on the contrary, what is the *right* of voting at an election for the shire, but the general *birth right* of Britons, the security of their liberties, the boast of their country; a right which is, perhaps, at present well defined, though subject to some inconveniences in large county elections, and a right, the exercise of which should be narrowed no further than is absolutely necessary for convenience and public safety.

Let us, therefore, bear no more comparisons between the right of electing our representative in parliament, and the right of shooting any game, even black game: and may he be shot who even endeavours to confound them!

Yours truly,

X.

*A practical Treatise of the LAW of VENDORS and PURCHASERS of ESTATES.* By EDWARD BURTENSHAW SUGDEN, Esq. of Lincoln's Inn.

London. Brooke and Clarke, Bell yard, Temple Bar. 1805. 8:6.

ON a superficial view, it may be thought perhaps that the moral apothegm contained in the *motto* to this work,\* and a corresponding passage from *Cicero's Offices*, comprise the sum of all that can be said upon the rights and obligations of vendors and purchasers; and, in a great measure with respect to the sale of mere chattels, they are very few and simple. But though in morals the duties to be performed may be comprised in a few plain axioms, yet, in human laws, it is necessary not only to enjoin the performance of general duties, but also to prescribe forms by which those duties may be enforced. With respect to landed estates also, which are subject to various charges and liens, and in which possession cannot be had so exclusively by the proprietor as to convey even that degree of title which possession gives in the case of mere chattels, the purchaser must often be embarrassed with difficulties in ascertaining the nature and validity of the title which he shall acquire in the thing purchased.

The law on this subject is, therefore, of the greatest importance; the buying or selling of estates is a transaction of very frequent occurrence; and, on the part of the purchaser the utmost discretion and circumspection is most frequently requisite to make him secure. As it is also a transaction which one party at least is always eager to see completed speedily, a time is fixed within which it is to be concluded; and it is necessary that caution should not be too slow, nor delay blunt the purpose of the parties. When the subject of the purchase is of considerable value, advice is usually sought from the most able and most practised conveyancers; but many cases occur in which the value of the purchase is too small to admit of the necessary expense, and though in such cases points of the greatest difficulty may occur, yet they are generally left to the conduct of the attor-

\* *Bonæ fidei venditorem, nec commodorum spem augere, nec in-commodorum cognitionem obscurare oportet.* VALEMIUS MAXIMUS, L. VIII. c. 21.

nies alone. To afford them a more easy means of acquiring the knowledge which is necessary to be applied in these transactions is therefore, in our opinion, to benefit the community; but moreover, to comprise in a short compass, or clearly and intelligibly to digest the various doctrines which apply to any subject of such importance, is not only to facilitate the progress of the younger student, but also to add to the convenience of the most experienced, even though the author himself should be young and should not have acquired all the practical skill which in a more advanced period of life he may possess. For from the judicious studies of the young, when they are well directed, and have been sedulously applied to any particular subject, even the most experienced and skilful may glean something; and indeed it so frequently happens that compilations and treatises upon legal subjects are written by gentlemen in the outset of their professional career, that to reject advice, because it does not come from those who have consumed their midnight oil for twenty years and upwards in the study and practice of their profession, would be to refuse almost all the aids which modern times have afforded to the student.

We therefore cannot but recommend the present work, which is the first production of a gentleman who is practising as a conveyancer under the bar, as very deserving the notice of the profession at large; and we congratulate him upon the choice of a subject which has been hitherto, we believe, wholly untouched in a separate form, and which must be of great and general utility—a choice which must be considered, with a view to interest, as extremely felicitous, since it would secure even to a bad book (such is the nature of the necessary demand for professional works) an extensive sale, and to the author some pretty useful reputation, amongst those whose approbation would in the end serve him much, in spite of the severity of the acutest critics. In the present instance, however, we believe the author has nothing to apprehend; he has undertaken a useful task, and from an attentive examination of it, we may add he has performed it with, at least, an adequate skill; and we trust his reward will be equivalent to his merit.

In the execution of it, he deserves praise for having pursued a plan which we recommend to the consideration

of all writers on legal subjects, in as much as it tends to insure originality of manner as far as can be expected, though it may not always be necessary, and may in some cases be misapplied; since not to take advantage in some degree of the labour of others is not to take the proper means of improvement; but understanding the author as we presume he ought to be understood, we think he acted judiciously when he says, he laid down for himself the following rules:—

“In regard to those parts in the elucidation of which the talents of other gentlemen have already been applied, it has been the author's constant practice not to resort to the works of those gentlemen, until he had gone through all the cases he could meet with on the subject, and had finally arranged the materials he had collected in his own method. This plan was adopted for two reasons, first, in the hope that a new arrangement might throw some additional light upon the subject; and, secondly, because it seems hardly justifiable for one author to appropriate to himself the labours of another. Where any author has been quoted, the credit of the passage is secured to him by the mode of quotation adopted.”

In point of style, the author has declared that he has studied brevity, and we will add, that he is not remarkably deficient in accuracy and perspicuity, and has not committed that worst of all faults, affectation.

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*Powell's original Points in Conveyancing.*

MR. EDITOR,

THE following Notes of POINTS in CONVEYANCING are in the hand-writing of the late Mr. POWELL; if you think fit to insert them in your JOURNAL, they will, doubtless, be found useful to some of your readers. I send them to you in their original rude state. I have not leisure to make any comments upon them; and indeed it is the less necessary to do so, because in your work, if any errors may have crept into them, it is most probable that some of your correspondents will be inclined to scan them closely, and point out their defects.

Though my opinion of the abilities of the late Mr. Powell is as high as that of any of his admirers, yet in a posthumous publication, as this will be considered; I think the advice which you gave when you reviewed the *Points in Conveyancing*, lately published, should be attended to; namely, that these are not, in effect, to be considered as authoritative *dogmas* which are to be implicitly received, as decisions of the courts are, but rather as the suggestions of an ingenious and acute mind, which may not be presumed to be infallible, and which should rather set the student upon thinking for himself, and working out his own way to truth and certainty.

I am, Sir, yours, &amp;c.

Lincoln's Inn, Sept. 20, 1805.

J. C.

*Trust—Discharge of Trustee.*

A trustee under a devise being desirous of not acting, and of being discharged from a trust, and there being a power for this purpose, this method was taken:

A deed was made to which all persons interested were parties; reciting the will and subsequent transactions, and reciting that one of the trustees was desirous of being discharged from the trust reposed in him,\* and that the parties interested were desirous of appointing a new trust-

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\* There was a power to appoint a new trustee.

tee in the will, &c. for the purposes in the will mentioned, and it was witnessed that by virtue of the power, the parties named a new trustee.

And it was further witnessed, that for the purposes aforesaid, the trustees named in the will bargained and sold, remised, released, ratified, and confirmed the real estates (to a third person), to hold upon the trusts afterwards expressed.

And it was further witnessed, that the said trustees did bargain, sell, assign, transfer, and set over, and the persons interested did remise and release the personal estate to hold to the same trustee upon the like trusts; which trust was declared to be upon trust, that the assignee should within a limited time, by indorsement, convey and assign the same hereditaments and premises to the use of the new trustee, and one of the old ones, so as that the same might be effectually vested in the new trustee, and the old one, &c. upon the trusts, &c. and subject to the powers, &c. in the said will and codicils, &c. or such as were then in being, undetermined and capable of taking effect; with a covenant from the said trustees that he had done no act to incumber.

Then a deed poll or appointment was made, reciting as above, whereby it was witnessed, that all persons interested (naming them,) by virtue and in exercise of the power, &c. did nominate the new trustee in the place of the old one, and also did direct and appoint the old trustees to do and execute all such acts, &c. necessary for conveying, assigning, and transferring the same to the new trustee, and the old one.

Then an indenture inrolled in the court of Exchequer, and indorsed on the first deed was made, whereby the new trustee (to whom the assignment and conveyance was made), did grant, bargain, and sell unto the new trustee and his heirs, (the old trustee being dead), the real estates, to hold to the trustee and his heirs for ever. And it was thereby further witnessed, that in like manner the said trustee did grant, bargain, sell, assign, and set over the personal effects, to hold to the said new trustee upon the several trusts as aforesaid. Covenant from the trustee that he had done no act to incumber.

*Trustees—Widow—Exchange of Interest in Land for Interest of like Amount in Stock.*

A widow, who had married again, being intitled to

an annuity of 1000*l.* a year out of her husband's estates; was applied to by his trustees to accept in lieu thereof the interest of stock of like amount. This mode was followed :

Long annuities to the amount were bought. Then by indenture *quadrupartite*, between all persons interested in the long annuities of the first part; the trustee of the real estate, of the second part; the widow and her second husband, of the third part; and the trustees in whose names the long annuities were invested, of the fourth part; reciting all prior transactions, the desire entertained to discharge and exonerate the real estates from the yearly charge, and that the same should be held by the trustee so exonerated and discharged upon the trust, &c. and that for that purpose they had caused application to be made to the said widow and her husband, and proposed to lay out and invest monies, &c. in the purchase of bank long annuities, for eighty years, &c. to be transferred, &c. to persons to be named by husband and wife, in trust, to permit, or otherwise to empower her and her assigns to receive the yearly income thereof as the same should become due at the Bank; to which proposal she had agreed :

And reciting that the said manors, &c. had been or were intended to be effectually released and discharged from the said rent-charge of 1000*l.* by indenture of even date, and by a fine in the said release, covenanted to be levied by the said husband and wife, on the same annuity or rent-charge :

And further reciting, that the said 1000*l.* per annum Bank long annuities, had, pursuant to such agreement, been transferred into, and then stood in the names of the said A. B. C. upon the trusts after expressed concerning the same :

It was witnessed, that in pursuance, &c. and for the considerations aforesaid, it was respectively agreed between all the said parties thereto, that the said A. B. C. should stand possessed of and interested in the said, &c. upon the trusts, &c. after expressed, concerning the same, viz. upon trust to pay to or permit the widow to receive the said annuity in lieu and satisfaction of the said annuity or yearly rent-charge before mentioned to be secured, &c. with provision for payment of half a year's annuity after her death as therein mentioned : and then upon trust to re-convey the said long annuities to the persons intitled.



Agreement that the husband and widow should not interpose, but during their joint lives; and that the said annuity should survive to the widow, if she outlived her husband, free from his contracts.

Covenant against any diminution of the said 1000*l.* Bank long annuities, by taxes or otherwise, and for transferring to the said trustees for the purposes aforesaid, so much more Bank long annuities, or other capital or principal sum, &c. as the said trustees, with the consent of the said widow, should from time to time think sufficient and necessary to secure the full payment of the said yearly sum of 1000*l.* to her and her assigns for her life as aforesaid.

Proviso that in case the said 1000*l.* per annum, Bank long annuities, or any part thereof, or such other stock, &c. so to be transferred for the purposes aforesaid, or any part thereof, should at any time thereafter, during the natural life of the said (widow), be redeemed or paid off by authority of parliament, or otherwise howsoever; or come to the hands of said trustees; that then it should be lawful for them during her natural life, with her consent in writing to lend or place out the same in such other public or private securities, or invest the same in the funds, as said trustees, with her consent, should think proper, upon the trusts, &c. aforesaid, or such as should be then capable of taking effect.

Then an indenture quadrupartite was made, whereby the trustee of the term created to secure the former rent-charge, did by direction of the parties interested in the annuity, and with the approbation of the parties interested in the freehold, bargain, sell, assign, surrender, and yield up, the terms, to the intent that the same might merge in the freehold expectant; and that the same manor might from thenceforth by virtue of the fine thereafter covenanted to be levied by the said husband and wife and of the surrender thereby made, be freed and discharged from the said annuity or rent so limited, in use to the said—and her assigns for her life as aforesaid. And the said (trustee, his heirs and assigns), might from thenceforth stand and be seised of the said manors, &c. so exonerated and discharged upon such and the same trusts, &c.

Trustee of term then covenanted that he had done no act to-incumber.

Then husband and wife did release, exonerate, and dis-

charge the premises from the said amount, and all powers for securing the payment of the same.

Covenant from husband and wife to levy a fine.

And declaration and agreement that the said fine, &c. should enure, to the intent that the said charge, &c.

*Powers.---Will.---Appointment.*

N. B. Every devise made under a power, is an appointment of uses deriving all its efficacy from the power, and is in nature of an appendix or ancillary settlement to that out of which the power issues; into which, in point of construction, it is to be in a manner engrafted. So that such a writing, though called a will, derives no force, nor efficacy from the statute 32 Hen. VIII. enabling persons having lands to devise; but fetches all its validity from the original settlement, operating by way of use. All the books are clear in this point, that wills referring to powers in deeds of uses, are but appointments, and not devises, and that the appointees claim under new or further uses. Whitlock's case, Sir Edw. Clere's case, in Co. Rep. And when any persons claim under this appointment, they are said to be in, not by the will, but by the deed.

It is a rule, in cases of powers, that where an act imports in itself a necessity to work by way of appointment under a power; there, rather than that act shall be deemed void and invalid, the benignity of the law is such, that though it refers not by any express reference to the power, yet it shall be construed to have its force and operation from that power, and shall be made good thereby, and this to prevent deliberate and solemn acts from being ineffectual, and to uphold the intention of the parties thereto. *Quando quod ago ut ago non valet, valet quantum valere potest.*

A codicil may operate as an ulterior appointment to a will by force of a power in a settlement, &c. As if a will be the first appointment, and expressly refer to a power, and is an act or appointment in pursuance and in exercise of it: then comes a codicil expressly referring to a will which is to be locked to, and coupled with it in construction; it is like a postscript to a letter, or an appendix, or supplement to a book, and must be of the same nature.

*Fines.*

As to the bar arising under the statute of 4 Hen. VII.

called the Statute of Fines; that statute, we must observe, has three parts; the first part is called the body of the act, the two other parts consist of two savings.\* The 1st. part, viz. the body of the act says, that fines duly levied with proclamations, shall conclude as well privies as strangers, except persons covert, not being parties, persons within age, in prison, out of the realm, or of unsound memory; the savings are for the benefit of strangers, provided they prosecute their rights and titles within five years after the fine levied, or after their titles accrue and their disabilities are removed. Now it has been held, that every person having present right, would be included in the body or first part of the act, were it not for the express exception therein of persons covert, within age, in prison, out of the realm, &c. but then when any such persons are under the description in the exception, their being so, expressly excludes them out of this part, that is, the body of the act; therefore the levying a fine of lands, to which such excepted persons have present right does not at all conclude or affect them; nor is any such fine any bar at all to them, consequently they are under no necessity to make any entry or claim to avoid the bar; for, with respect to them there is no bar to be avoided. This was Cotton's case, 2 Inst. 519, where a person having present right, was out of the realm at the time of the fine levied, and never returned: it was held, that the heirs of that person might enter, and bring their actions at any time. The second part is as to persons having a present right, but being out of the realm, &c. If when the bar of the fine falls upon any one, at a time when he is out of the realm, then he is within the second saving, i. e. conditionally if he enter within five years; and if he die beyond sea, the right to avoid the bar to the fine will fall on his heir; and if he be then under age, he also will be within the second saving, and then he also must enter within five years after that disability is removed; that is, within five years after his coming of age; but if he be of age when the bar falls on him, he must enter within five years from thence.

Then comes the third part, which contains this further addition, viz. that when any of those persons who shall be entitled to the benefit, and who shall, either at the

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\* Vide 2 Inst. 519. Et *Hulme v. Heylock*, Cro. Car. 200.  
xv33.

time of the fine levied, or at the time when his title first accrued, lie under any of the impediments of coverture, infancy, imprisonment, absence out of the realm, or of insanity, that he shall, within five years next after the impediments removed, enter and make his claim, and if not, then the bar is to be absolute. This condition is to be performed literally, and indispensably whenever the impediments are actually removed; that is, whenever the woman under coverture becomes sole, the infant attains his age, the party who is beyond sea returns into the realm, the person imprisoned obtains his liberty, and is at large, and the *non compos mentis* becomes sane and of sound memory. But suppose these persons die under their impediments, as if the married woman dies under coverture, the infant dies in his minority, the *non compos mentis* dies under his disorder, here it becomes impossible to comply with the terms of this condition according to the letter of the statute. What is more reasonable then than to say, that such persons shall be bound for his making his entry or claim to no time at all, but shall be at large and not be concluded by the fine, the words of this fine having withdrawn him from the bar or conclusion created on the body of the act, and having as it were set him at large, yet not absolutely, but *sub modo*; viz. that when his disability or impediment is removed, he do within five years afterwards, make his claim or entry for the avoiding the fine. Is not this in nature of a condition subsequent so that the saving in respect of the disability or impediment does in the first instance take him out of the body of the act, though the non-performance of the condition after the removal of the impediment excludes him again if he lives to be set at large, and to be released from his impediment; but if he die before the impediment is removed, why should not this be said to be a dispensation from the rigour of the condition, since the performance becomes impossible by the act of God. The case in *Leonard*, though perhaps it related to the same family of the *Cottons*, as the case 2 *Inst.* 519, was probably under some other settlement or limitation than that mentioned in 2d *Inst.* for in the 2d *Inst.* the fine was levied by *Thomas Cotton*, at the time when *William Cotton*, who had the present right, was out of the realm; whereas in the case in *Leonard*, it is stated that the person who levied the fine had for one

moiety an estate-tail *in presenti*, and there the fine as to that was a clear bar; and as for the other moiety, *Thomas* is there said to be tenant for life, with remainder to *William*, who was the person out of the realm; this differs materially from the case in *2d Inst.* There, as to *Hulme* and *Heylock*, there was a person who was an infant, at the time of the fine levied, and he had present right, and afterwards died in that infancy, leaving a sister, who also was an infant, but had been married before her brother's death. Her husband suffered five years non-claim to run upon the lands, and though the judges held that after the five years non-claim the husband was barred, yet they held, that he dying, the wife's right revived, and she was not concluded by the fine: so that the determination in this case, gave her the same right to avoid the fine which Lord Coke's arguments are in favour of, in *2 Inst.* 519, in *Vin.* title Fine, F. a. This case out of the *2 Inst.* 519, is particularly stated and abridged, and he does not note that in any of the books there is any other case to the contrary: he even makes the point here determined a distinct head upon the point, or what time claims are to be made to avoid fines, and in what cases such claims may be made at any time. The case in *Leonard* is also reported, *Saville*, 127, 128, and appears to be *Cotton's* case. At the end of that case it is said that the saving in the statute which is the subject of the present inquiry was upon a condition, meaning a condition to be performed in future, and when it happens that such condition has not been performed, yet if it so happens that there was no default in him who ought to perform such condition, there is no reason why such non-performance should exclude him from the benefit of the saving. This quadrates very well with my Lord Coke's reasoning in *2 Inst.* 519, before mentioned.

A fine to be a bar at all, must work a discontinuance of the estate-tail, and of the remainder depending thereon.

The rules upon discontinuances are pretty nice. In general it seems to be well established, that an estate-tail, cannot be discontinued by any act done by the tenant in-tail, unless he who makes the discontinuance was some time or other *seised* by force of the entail. *Litt.* 637.

The principal cases are *King* and *Edwards*, *Cro. Car.* 320, and *Stephens* and *Bailtridge*, *1 Sid.* 83. In which cases the distinction will be found established.

Then if a fine make not any discontinuance, no tortions fee is gained thereby, consequently the rightful estates remain where they are, and are not to be turned to an action, or the entry taken away.

And it is generally said that when the estate is not turned to a right, there they to whom the estate belongs are not, either by force of any warranty or any statute of limitations, or non-claim, driven to their action or claim. And this stands with reason, for why should he whose right is not disturbed or displaced, or whose possession or seizin is not altered, be driven or compelled to make *any entry or claim*, when he is not ousted or divested of his right, but it remains where it was, and he having no wrong done him, wants not to have it redressed. To this effect are the cases 9 Co. 106. Co. Litt. 327, 388, 1 Mod. 4, and other books.

It is true, the words of the statute of fines are only "the fines shall conclude all persons, saving the rights of such as make their entries, &c. within five years after their titles accrue." But if a fine make no discontinuance, then the persons affected are not within the words of the act.

If the right of entry fall on a person out of the kingdom, and he die, then it devolves on the next in remainder; but he cannot be in a better condition than those who precede, and then if he be under no disability himself, and claim by descent from the person who was disabled, the statute requires that those who are in the saving, (as his ancestor was,) shall prosecute their right within ten years after the disability is removed. If therefore, the person out of the realm, &c. return, he is entitled only to ten years from thence to prosecute his *right*, and if he die, then those who claim by descent must prosecute their right either within twenty years from the time of the rights accruing in the ancestor, or within ten years from his ancestor's death. If this was not to be the case, possessions would never be quieted, and this is a statute of repose; and ought to be liberally construed in furtherance of the intent thereof.

### *Recovery.*

In *Goodtitle v Bradburne*, Comyn's Rep. 564, 565, it is admitted by the whole court, that an husband, seised in right of his wife, may alone make a tenant to the precept by lease and release; for it is sufficient if the wife be

brought in on the voucher. *Ca. T. Talbot*, 167. So in *Robinson v. Cummins*, in *Cancell. Hill*, 9 *Geo.* II. It was the opinion of Lord Talbot that a husband seised in right of his wife could alone by lease and release, or by bargain and sale, make a tenant to the præcipe, and this is become the common practice, it being enough to bar the entail in the wife, to call in the wife with her husband on the voucher. *Et vide Shelly's case*, 1 Rep. 93, 94. *Moor*, 137, 138. 1 *Sid.* 229.

*Nota.*—It was admitted throughout the whole of the cause between *Bridges* and the *Duke of Chandos*, *Mich.* 1 *Geo.* I. *B. R.* that a surrender by tenant for life will be presumed in support of a recovery suffered by tenant in tail in remainder, if such recovery has been accompanied with long possession. 2 *Burr.* 1067, 1070, 1073, 1705; and it seems to have been long so settled. *Vide* 1 *Ventris*, 257 (*i. e.*) when there has been great length of adverse possession, and if the contrary had been held, it might have greatly shaken property, for it was anciently a common practice for tenants in tail in remainder, after a life estate, to procure a conditional surrender from the tenant for life, and then to suffer recoveries without joining the tenant for life in the deeds to make the tenant to the præcipe, which deeds of surrender may frequently be lost when they are ancient.

### Fines.

In 2 *Vent.* 48, *Ball v. Cock*, it is said, from a case in the year books cited for it, that it is the common course to take the acknowledgment of fines first, and then to sue out a writ of covenant afterwards, and in that case they held that a fine was good, when a woman, who with her husband had acknowledged a fine, and the caption was taken the 7th of *December*, died the 20th of *February*, and there was a writ of covenant taken out, returnable the *Michaelmas* term before, and the king's silver was entered as paid the 22d of *February*, two days after the death of the wife; and then the court said, that the entering the king's silver after the party's death, could not then be examined in regard the fine was engrossed and completed as a fine of *Michaelmas* term. In *Viner*, title *Fine*, F. b. 6. fo. 332, there are many cases to this purpose, particularly *Farmer's case*, *Hob.* 330.

*Observations upon Intestate's personal Estate, and how distributed in the County of York.*

The manner of succeeding to personal estates in the province of York. 4 and 5 W. c. 4, The inhabitants of the province of York may dispose of their estates, notwithstanding the custom.

22 and 23 Car. II. 10 and 11 Ja. II. c. 14. As to intestate's estates, that part called the death's part, is distributed by these acts. The custom is to be observed as to all the other parts as formerly.

*The Case of an Intestate leaving a Widow, a Child or Children, none advanced, no Heir.**A Widow, a Child or Children, none advanced, no Heir.*

First, One-third is allowed to her as her widow's part, share, or thirds, due to her by virtue of the custom of the province aforesaid; one-third is due to the child or children, equally to be divided among them as their filial parts or child's portion, by the same custom; and the third and remaining part, commonly called the death's part, is now to be divided according as the said statutes do direct, viz. one-third of it to the widow, and the remaining two-thirds to the said child or amongst the said children.

*A Widow, Children, and Heir.*

One-third is due to the widow by custom, one-third to the children, the heir being excluded by the said custom from claiming any share; but the remaining third is to be divided in manner following, viz. one-third to the widow, the rest among the children, including the heir by virtue of the said statute.

*Widow, Child, and Heir.*

One-third to the widow, one-third to the child not heir, remaining one-third; third part to the widow, the rest to the children.

*Widow—Child—Heir.—A Widow and Child, one unadvanced and the rest advanced;*

A moiety is due to the widow by virtue of the said custom, remaining moiety, one-third to the widow, the rest to the said child by virtue of the said statute.



One-third to the widow more, one-third of a third residue to the children unadvanced.

*A Widow and three Daughters co-heiresses.*

A moiety is due to the widow as her share by the custom, remaining one-third to the widow, the rest amongst the co-heiresses.

*A Widow, one unadvanced, one in Part advanced.*

One-third of the whole is due to the widow as her share by the custom, and further, one part of the death's part by the statute; and as to the rest, the child in part advanced, must put thereunto what he has received into hotch-potch, and then the whole is to be equally divided between them, so as to make both shares equal.

*A widow, one in Part advanced.*

The third is due to the widow by the said custom, and further, one-third of the death's part; all the rest to the child.

*A Widow, one advanced.*

Half to the widow, remainder, a third to the widow, the rest to the child.

*A Widow, one unadvanced, one in Part advanced, one Heir.*

One-third is due to the widow, called her thirds or widow's part, and more to her one-third of the death's part; the remainder of the death's part is equally to be divided amongst all the children, whereof the heir is to have one according to the statute. As to the remaining third part of the estate, called the children's part, that child, part advanced, must put thereunto what he received in hotch-potch, and then the whole is equally to be divided between them, the heir being excluded from this part by the custom of the province.

*A Widow, one-third in Part advanced, an Heir.*

One part is due to the widow, and further, one-third of the death's part; the remainder of the death's part is to be divided between the children by virtue of the said statute (which only distributes this part;) but as to the

child or children's part, the heir having no title thereunto, it is all due to the child in part advanced.

*A Widow, one unadvanced, one in Part advanced, one Heir.*

The widow must have one-third of the whole clear residue by virtue of the custom, and further, one-third part of the death's part according to the statute; the remainder of the death's part also to be distributed by the statute.

*Grandchildren, a Child advanced, one unadvanced.*

Among the children heir and grandchildren, as to two-thirds, in manner following, viz. one fourth to the unadvanced, one-fourth to the part advanced, one-fourth to the heir, and one-fourth to the grandchildren as representatives of their father; but then, as to the remaining third, called the children's customary part, the child in part advanced may put thereunto what he has so received, and then the whole must be equally divided between the said so unadvanced children, the heirs and grandchildren having no right to any share by the custom, and those advanced are always excluded, save that the heir has a share of the death's part by the statute although advanced.

*Widow and Grandchildren.*

A moiety is due to the widow by custom, half of the remaining moiety to the said widow, the rest among the grandchildren as next of kin by the statute.

*A Widow and no Children.*

Half is to the widow, and half of the remaining half is to the widow, and the rest to the next of kin, all equally amongst them, viz. a moiety is due as their share by custom, the remainder (the death's part) to be divided in like manner by the act of parliament.

*Children and no Widow.*

One moiety among them, equally to be divided as their shares due by the said customs, excluding the heir, and the remaining part, being the death's part, is to be divided in like manner, including the heir, by virtue of the said statute.

*One Child.*

All to him or her, as next of kin.

*One Child unadvanced, one Heir.*

One moiety to the child unadvanced as his customary share, the remaining moiety equally amongst them by the statute.

*One advanced, one Heir.*

All to the heir, the one advanced having had his full share, and therefore excluded both by the statute and custom, from having any claim to the intestate's estates.

*One advanced, one unadvanced.*

All to the unadvanced for the reasons aforesaid.

*One unadvanced, and one in Part advanced.*

All to the one in part advanced.

*One in part, and two advanced.*

All must go into hotch potch, and then be equally distributed amongst them.

*One heir, one in part advanced.*

One moiety being the child or children's part, is due to the child, although in part advanced, the heir having no title to the child or children's part by the custom ; but the other moiety being the death's part, is equally to be divided amongst them, by the statute.

*One part advanced, one unadvanced, one Heir.*

One moiety is the child or children's part by the custom, excluding the heir, but he in part advanced must put into hotch potch what he has received, and then the total must be divided between them so unadvanced : and the other half being the death's part, must be equally divided amongst them, including the heir, by virtue of the statute.

*Three Daughters Coheireses.*

Equally amongst them all, as next of kindred.

*One Child, Heir unadvanced.*

All to him as next of kin.

*Three Cohæresses, one being advanced.*

All must be equally divided amongst them, without any consideration had of what one or more of them received in the life-time of the intestate, by the statute.

*A Daughter by said Children, by a Son, Heir advanced.*

A moiety is due to the daughter by the said custom, the intestate having no wife or other children, and the other moiety being the death's part, is distributed by the act, viz. one moiety to the said daughter, the rest amongst the grandchildren as representatives of their father.

*A Father.*

All to him as next of kin.

*A Mother.*

Similiter.

*A Mother, Brothers and Sisters.*

All equally amongst them, share and share alike, by the statute.

*Brothers and Sisters, and Brothers' and Sisters' Children.*

All equally amongst them; but the children are to have shares according to the several stocks or families of which they are descended, and not according to the number of persons.

*Brothers' and Sisters' Children.*

All equally amongst them, according to the number of their persons, they being all in equal degrees of kindred.

*Grandfather or Grandmother.*

All to him or her, there being neither widow, child, father or mother, brother, sister, nor their children.

*Grandchildren.*

Equally amongst them, as next of kin.

*Uncles, Aunts.*

Similiter.

*Cousins German.*

Similiter.

*On Distributions.\**

NOTE. Grandmother is nearer of kin than the aunt; and is intitled to administration in preference to her. 1 P. Will. 41. vide Groud, *ibid* 48. She is lineal, the other collateral.

The wife, or next of kin may be appointed to the administration, by the ordinary, at his election. Sir G. Sand's case, 1 Sid. 179.

But a husband has an original right to be administrator to his wife by the 31 Edw. III. c. 11, as the most loyal friend of the wife; and is not within the 21 Hen. VIII. c. 5. *Duncomb v. Mason*, cited 1 P. Will. 45.

Every person entitled to a distributory share has an interest vested before distribution transmissible to his representatives. But the distributional share is not so vested in the whole, as not to let in a posthumous child. *Edwards et al. v. Freeman*, 1 P. Will.

The father surviving has the whole child's estate. 1 P. Will. 48.

The mother surviving, had the whole likewise, at common law; but 1 Jac. II. lets in brothers and sisters for a moiety. *Ibid*.

Grandfather by the father's side, and grandmother by the mother's side, being next of kin, shall take in equal moieties. *M v. Barham*, cited 1 P. Will. 53.

*Powers.*

There is a strictness required in the essential part of the execution of all powers. Thus a power to make leases for three lives or twenty-one years, does not authorise leases for ninety-nine years determinable on three lives; *Whitlock's case*: nor a power to grant an estate of freehold does not extend to a chattel interest. *Newport and Savage*. A power to grant an estate out of land does not authorise you to charge the estate with a rent charge. *Harvey and Harvey*, in Chancery, 1740. A power to charge does not give a power to grant an estate out of the land. 1 *Lev.* 150. 237, 238. *Hard.* 395. *Dy.* 263.

*Leases made under powers*, differ from common leases; for in the latter, the lessee, till entry, has only an *interesse termini*, and he has no actual estate; but when the lessee actually enters, then he has an actual estate in

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\* Vid. *Blackborough v. Davis*, P. Will. 41. A leading case on this subject,

possession divided from the reversion, and then the lessor may grant the reversion; whereas, upon a lease under a power, the lessee, upon the very sealing, has an actual estate in possession, divided from the reversion; and therefore it is said these are not real estates, but only declarations of uses to such and such persons for years.—These consequently are not real leases, but acts that bear as near a resemblance to leases as possible.

*Copyhold, Covenant to surrender.*

*Nota.* *Covenant, by tenant in tail in equity* of a copyhold, in his *marriage settlement*, to *surrender* his copyhold lands to the use of himself for life, with remainder to his first and other sons in tail, with reversion to himself in fee, will not of itself be sufficient to dock the equitable intail; for if such an entail be created, a recovery in the court baron is necessary to dock it; it being a rule, that the same steps must be taken to bar an equitable estate-tail, as it would be requisite to bar it, were it a legal estate-tail. Determined in *Hale's case*, in Chancery, 11th Dec. 1764.

*Quare*, if a court of equity will consider a covenant by a copyholder, in his marriage settlement, to surrender to the use of himself for life, remainder to his sons in tail successively, remainder to the use of J.S. a volunteer and mere stranger, of such a nature, as that they will, if the copyholder dies without issue and without a surrender, supply the defect against the heir at law, upon the ground of its being an equitable entail or a trust.—It seems not; if they would, they would equally supply it in case of a volunteer in the first instance; and this would supersede surrenders. *Vide ibid.*

*Estate tail, Recovery.*

*Mr. Fearne* was of opinion that a period of thirty-eight years was not a sufficient time to dispense with an inquiry whether a person suffering a recovery was at that time *tenant in tail*, and qualified to gain the fee thereby created.

*Recovery, not presumed from Length of Time.*

In *Leighton v. Leighton*, where an old intail was created in Hen. VIII.'s time, the family had acted as absolute owners in fee, and there had been an inquisition finding that several of the ancestors were seised in fee; the Court

would not *presume a recovery from length of time*. But on proof of fines having been burnt, the jury presumed a fine levied; but their acting as owners was not sufficient to warrant that presumption. Vide a case cited 2 *Vcz.* 311.

*Crown.—Recovery not sufferable.*

You cannot suffer a recovery of lands the reversion of which are in the crown: otherwise, if the crown grants the reversion to a subject.

*Recovery — Surrender, when presumed.*

Surrender of tenant for life presumed on recovery of *forty years standing*. *Strange*, 1129.

What evidence admissible to support a presumption of a surrender, viz. attorney's bill, containing a charge for drawing and engrossing it. *Ibid.*

After 40 years' possession of a copyhold under a will, a surrender to the use of the will is presumed. *Lyford's case*; vide 1 *Vernon*, 195.

*Livery presumed.*

Lessee 25 years in possession: livery presumed. 1 *Vern.* 196.

After 40 years possession of a piscary: decree to surrender and release title though a defective surrender. 1 *Vern.* 196.

*Recovery—Death of Vouchee.*

*Dedimus potestatem* sued out to take the warrants of attorney of A. and B. his wife, in order to suffer a recovery. B. dies.

Where *vouchee* died on the day the recovery was passed at bar, and before the writ of summons *ad warrantizandum* was returnable, the recovery, Serjeant *Prime* was of opinion, would not conclude the right of that *vouchee*.

Where the warrants of attorney, in order for suffering a recovery, were joint, it was held, that it might proceed, where one died, as to the survivor; and the recovery be completed, as to him, so as to bind; but that it was proper to suggest the death of the *vouchee*, upon the roll, immediately before the entry of the appearance of *Isaac* —; From the opinion of Serjeant *Prime*.

*Answer to the Query of Senex concerning Lineal Descent.*

Mr. Editor,

THE following ideas, having suggested themselves to my mind, in considering the point stated in your last by *Senex*, are submitted to your perusal, in the hope that they will not be thought unworthy of insertion. I shall in the first place consider for what reason it is that lineal ancestors are excluded. You are aware that every purchaser at this day takes his feud *ut feudum antiquum*, and it, therefore occurred to my mind, that it was consequently necessary to consider first what the nature of *feudum vere antiquum* was. The great fundamental principle, in the descent of the really ancient feud, was that no one should inherit but those who had derived their blood from the first feudatory. The collateral rule *seisina facit stipitem* was but auxiliary to it, and adopted to make it good as far as possible. You see then that as well the first purchaser of the feud as also such of the lineal ancestors of the person last actually seised, as were descended from the first purchasers must have been dead before such last possessor inherited it, and it therefore follows that the existence of any lineal ancestor was demonstrative proof that he had not derived his blood from the first purchaser, but, on the contrary, was an ancestor above the purchaser, and was consequently disqualified by the original substantive rule itself. *Senex* and your other readers will not, I trust, after considering the subject with the aid of the above light, hesitate to admit that the universal exclusion of lineal ascent in the *feudum vere antiquum* is most satisfactorily accounted for in this way, since all the lineal ancestors who were, or had been qualified, under the substantive rule, by having derived their blood from the first feudatory were dead, and the existence of any lineal ancestor was consequently an evidence of his disqualification to succeed to the feud.

If you will permit me, I will for the assistance of your less discerning readers, endeavour to illustrate this; and therefore suppose the paternal grandfather (or, in other words, grandfather by the side of the father,) to have been the first purchaser, and the grandson to have died seised of the feud. It seems to me plain that the father and grandfather of the person last seised could not have



been living to take, inasmuch as they must have been dead before the last possessor *inherited*. Now had the great-grandfather been living, the substantive rule itself would have operated to shut him out from the succession, because his existence would have been sufficient proof that he had not derived his blood from the first feudatory. And for the same reason the brothers and sisters of the great-grandfather, and all other the collateral kinsmen of the last possessor above the great-grandfather, nay, the brother and sisters of the grandfather, and all collateral kinsmen above him would have been excluded; the existence of the great grandfather, proving beyond the possibility of doubt that the feud had not descended from any ancestor above the grandfather. When, therefore, the law admitted the rule *seisina facit stipitem*, it, at the same time, introduced the principle *quod ascendentes non succedunt*. But was I to stop here some of your correspondents might perhaps think it necessary to inquire how it happens that all collateral relations are admitted at this day, although lineal ancestors, (as such) are excluded universally. Now I imagine that my reflections upon this obscure subject, have enabled me to give a decisive answer to all such questions, and one which they will feel to be so. That answer is as follows, that 'when the *feudum novum* was granted to hold *ut feudum antiquum*, the feudal donation being taken strictly, it was governed by the rules which regulated the descent of the *feudum vere antiquum*, although the policy which dictated them was wanting. It is clear, therefore, that, as it was a rule in the *feudum vere antiquum* that lineal ancestors should not succeed, lineal ancestors were excluded in the descent of the *feudum novum* held *ut antiquum*, the latter being held subject to the same restrictions as well as the same latitude of descent as the former. And as in the *feudum vere antiquum*, all the collateral relations of the person last actually seized, were admitted when it could not be ascertained who had been the purchaser, or from whom the feud had descended. So were all the collateral relations of the purchaser of the *feudum novum* held *ut antiquum*, (which you must observe could never have descended from any one) permitted to inherit, and when any lineal ancestor takes, he doth so take as a collateral kinsman. Before I conclude I must observe that I agree with your correspondent *Senex* that I have not been able to find in any book *what is at*

all to the purpose !!\* I presume, therefore that the above remarks will not be the less acceptable on that account.

New Inn, 26 September, 1805.

\* The editor cannot help thinking the following passage in *Blackstone's Commentaries*, vol. 2, p. 211, at least, somewhat to the purpose :

“ If we next consider the time and occasion of introducing this rule in our law, we shall find it to have been grounded upon very substantial reasons. I think there is no doubt to be made, but that it was introduced at the same time with, and in consequence of, the feudal tenures. For it was an express rule of the feudal law,\* that *successionis feudi talis est natura, quod ascendentes non succedunt* ; and therefore the same maxim obtains also in the French law to this day.† Our Henry I. indeed, among other restorations of the old Saxon laws, restored the right of such succession in the ascending line:‡ but this soon fell again into disuse ; for so early as Glanvil's time, who wrote under Henry the second, we find it laid down as established law,§ that *hereditas nunquam ascendit* ; which has remained an invariable maxim ever since. These circumstances evidently shew this rule to be of feudal original ; and, taken in that light, there are some arguments in its favour, besides those which are drawn merely from the reason of the thing. For if the feud, of which the son died seised, was really *feudum antiquum*, or one descended to him from his ancestors, the father could not possibly succeed to it, because it must have passed him in the course of descent, before it could come to the son ; unless it were *feudum maternum*, or one descended from his mother, and then for other reasons (which will appear hereafter) the father could in no wise inherit it. And if it were *feudum novum*, or one newly acquired by the son, then only the descendants from the body of the feudatory himself could succeed, by the known maxim of the early feudal constitutions ;¶ which was founded as well upon the personal merit of the vassal, which might be transmitted to his children but could not ascend to his progenitors, as also upon this consideration of military policy, that the decrepit grandsire of a vigorous vassal would be but indifferently qualified to succeed him in his feudal services. Nay, even if this *feudum novum* were held by the son *ut feudum antiquum*, or with all the qualities annexed of a feud descended from his ancestors, such feud must in all respects have descended as if it had been really an antient feud ; and therefore could not go to the

\* 2 Feud. 50. † Domat. p. 2. l. 2. t. 2. Montesqu. *Exp. L.* l. 31. c. 33. ‡ *L.L. Hen. I. c. 70.* § l. 7. c. 1. ¶ 1 Feud. 20.

*Ancient Readings unpublished.*

THE Editor, at the commencement of his undertaking, conceived a design of attempting to restore some of the ancient readings of the best authority, and to publish occasionally such as might appear to be most worthy of general notice; for he was convinced, that if there were really any thing valuable in such treatises, it could only be made public to the profession through the means of a periodical work; because, in any other form of publication, the expence of printing would never be repaid by the sale.

In pursuance of this plan he had the good fortune to discover the curious memoir in the hand-writing of *Sir Edward Coke*, which he gave to the public last year,\* and also a part of a *Reading of Script. Ashley*. The design was approved by Mr. *Hargrave*, whose judgment none will dispute, and whose ardour in the pursuit of

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\* In consequence of the absence of the gentleman by whom this was copied from the MS. the further account of it has been delayed; the editor will, however, resume it himself and probably conclude it in the next month, as he has great reason to believe that in respect to the rest of the MS. his friend was mistaken in thinking that it contained the copy of *Coke upon Littleton*, he himself thinks it is rather a common-place book of *Sir Edward Coke's*, though on the printed pages of the *Littleton* are many notes which probably formed the ground-work of the commentary.

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father, because if it had been an ancient feud, the father must have been dead before it could have come to the son. Thus whether the feud was strictly *novum*, or strictly *antiquum*, or whether it was *novum* held *ut antiquum*, in none of these cases the father could possibly succeed. These reasons, drawn from the history of the rule itself, seem to be more satisfactory than that quaint one of Bracton,¶ adopted by *sir Edward Coke*,\* which regulates the descent of lands according to the laws of gravitation.

There is also, as the editor recollects, somewhat to the purpose in *Gilbert's Law of Tenures*, 17. *Dalrymple F. P. c. 5, s. 3. Hale's Com. Law, c. 11, p. 262, and Runnington's n. D. Wright's Tenures*, 179. *Co. Litt. 11, a. n. (1)*.

¶ *Descendit itaque jus, quasi ponderosum quid cadens, illeorum recte linea, et nunquam reascendit. l. 2. c. 29.*

\* 1 Inst. 11.

NO. 33.

[ 11 ]

knowledge is only equalled by the liberality and kindness which he shows to every one, who is desirous of adding his mite to the common stock for the improvement of science. As soon, therefore, as he was informed of the editor's design he kindly offered him the inspection of his MSS. and favoured him with the loan of two folio volumes of Readings of considerable antiquity, which contain many which were once well known, much read, and in high repute.

From one of these volumes, the editor has selected a part of a reading of Sir Thomas Frowicke on the *Statute de Prerogativa Regis*, from which, as a specimen; the reader will be able to judge of its merit. To have printed the whole would at present have been inconvenient, and, as he believes, Mr. Hargrave has some intention of publishing it himself when he completes his juridical tracts, he feels himself not quite at liberty to do so, though there is another copy of the reading extant, in the *British Museum*.\*

Of the author, it is sufficient at present to say, that he was *chief justice of the Common Pleas* in the time of King Hen. VII. ; and that his reading is quoted as authority by Brooke under the following titles of his abridgment; viz. *Apportionment*, 28†. *Garde*, 120. *Notice*, 27. *Office devant escheator et hujusmodi*, 60. *Petition*, 41. *Testmoigne*, 30. *Travers d'office*, 54. *Villénage*, 71, *Prerogative*, 194.

\* The editor has stated this upon the authority of the *Bibliotheca legum Anglie*, vol. ii. p. 192; but upon examining the volume in the *Harleian manuscripts* corresponding with the number there referred to, he found only a few loose items on the prerogative from some other reading. He has the more to regret the not being able to discover this MS. because it would have enabled him, probably, to have corrected many errors in his own transcript, and consequently also in his translation.

The original MS. is written in a remarkably strong and fair hand; but without long practice in reading the ancient law hands, and indeed without a considerable acquaintance with the hand of the individual writer, it is extremely difficult to decypher the strange abbreviations which occur in almost every line. This he trusts will be a sufficient excuse for some obscurities which will be perceived in the following extract.

† Quoted thus, in *Lectura Frowicke*; A. fol. 119. Sed qu. If this is the reading meant?

The great *Bacon* also speaks of it, and of the writer in terms of the highest praise. In his *Readings* upon the statute of *Uses*, he says, speaking of his own design, 'and like to the matter of my reading shall my manner be \*', for I mean to revive and recontinue the ancient form of reading which you may see in *Mr. Frowicke, upon the prerogative*, and all other readings of ancient time, being of less ostentation and more fruit than the manner lately accustomed.' To be considered by *Bacon* as a model for his own imitation, is the highest praise, and will sufficiently sanction the work as an authority.

From this reading, the editor has selected a part which treats of chapters 9 & 10 of the *Statute de Prerogativa Regis*, both because it is not of too great length to be conveniently inserted, and because it is connected with the extract which was given from *Mr. Bridgman's* and *Mr. Kekewick's* Indexes to the *Chancery Reports*, and, together with them, forms almost a complete treatise upon the law respecting the king's prerogative in cases of *idiocy* and *lunacy*.

Of the remainder of the book, the editor will, at a future opportunity, give a complete and analytical account.

*Statutum de Prerogativa Regis. 17 Edw. II. Stat. 1.*  
A. D. 1324

Cap. IX.

The *King* shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessities of whose fee soever the lands be holden. 2. And after the death of such ideots, he shall render it to the right heirs, so that such ideots shall not alien, nor their heirs shall be disinherited.

Cap. X.

*His Prerogative in the Custody of Lunatics.*

Also the king shall provide, when any that before time hath had his wit and memory, happen to fail of his wit,

\* 17 Edw. II. Stat. 1. A. D. 1324.

† Perhaps, as he sometimes indulged in a quaint conceit, he means as the matter of his reading is a *use*, his manner shall be useful or of *use*.

as there are many *per lucida intercalla*; that their lands and tenements shall be safely kept without waste and destruction; and that they and their household shall live and be maintained competently with the profits of the same, and the residue besides their sustentation shall be kept to their use, to be delivered unto them when they come to right mind; (*quando memoriam recuperaverint*)\* so that such lands shall in no wise be aliened; and the king shall take nothing to his own use, and if the party die in such estate, then the residue shall be distributed for his soul by the advice of the ordinary.

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\* This phrase, 'when they shall have recovered their memory' and the frequent use of such phrases as the following, viz. *homme de bon memory*, 'being of sound memory and understanding,' and the like, which occur so frequently in our old law books, plainly demonstrate, that it was the then prevailing opinion, that *insanity* was either a mental and corporeal disease in which the memory was the faculty chiefly impaired, or, which is much the same thing, that a total or a very great defect of *memory* was so constant a symptom in such a disease, as to afford an infallible criterion by which that disorder of the mind which amounts to *insanity* in law might be ascertained. Thus *Shakspeare*—

'———It is not madness  
That I have uttered; bring me to the test,  
And I the matter will re-word; which madness  
Would gambol from.'———

Whether it is an infallible *test* at all times and in all cases, may be doubted; but in courts of *justice* it has been often tried with success. The editor remembers a *lunatic* who gave her testimony in chief, upon a pretended *assault* committed upon herself, with the greatest clearness and precision, and with such ease and eloquence as to impress many with a belief that she possessed an acute and well-disciplined mind; upon cross-examination the *counsel* put her to the *test* by simply asking her to repeat the story; this she could not do, but in so wild and confused a manner, raved about *Judge Buller*, the court of Chancery, and an old law suit, as to leave no doubt in the mind of any one, that her testimony could not be safely received. The medical writers with which the editor is acquainted, particularly the accurate *Dr. Cullen*, consider the want of memory as incident to the disease, and as producing, as it necessarily must, the want of right judgment. For as he says, 'our reasoning, and our intellectual operations always require the orderly and exact recollection or memory of associated

## Extract from Frowicke's Reading on the Prerogative.

"*Dominus Rex habebit custodiam terrarum fatuorum naturalium, &c.*" *Vide Statute.*

CEST Artycle est in affirmans dell comen ley; car le roy avera le custody dez fooles naturels per le comen ley; par ceo qu'ill nyant discrecyon de *ruler* ses enheritances et pur ceo que per son act son heyr. ne serre disheryte; et pur ceux cases, le roy avra le custody de le terre, durant son vie naturall, trouvant a luy reasonable sustynance in victu et vestitu; et apres sa mort son prochyn heyr avera le terre, &c. Et de quicunque seignior le terre soyt tenus est ne materyall, car *memesque* terre soyt tenus dell roy, unc ill avra tout son terre, *ut supra*.

2. *Item*, si soyt trouve quun tiell morust son heir deins age, et tient d'aut seignr, et puis apres, per briefe de *Ideocia*, soyt inquirend quill est foll naturel de nester, le seignr perdra le gard; mez aut est si soit trouve per *lucida intervalla ut postea inferius, &c.*

## TRANSLATION.

*The King shall have the Custody of Natural Fools, &c. (See the Statute.)*

THIS article is in affirmance of the common law; for the king shall have the custody of natural fools, by the common law, because they have not discretion to govern their inheritances, and in order that by his act, his heir shall not be disinherited. And for these causes the king shall have the custody of the lands, during his natural life; finding him reasonable sustenance, in food and raiment; and, after his death, his next heir shall have the land, &c. And of whatsoever lord the land shall be held is not material; for although the land should be holden of the king, yet he shall have all his land, *ut supra*.

2. Also, if it be found that one died, his heir within age, and be hold of another lord, and then, after, by writ of *ideoccy*, it is inquired that he is a natural fool from his birth, the lord shall lose his ward. But it is otherwise, if it is found *per lucida intervalla ut postea inferius, &c.*

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*Ideus.* But speaking of *mania* he says, that which 'for the most part distinguishes the disease is a hurry of mind in pursuing any thing like a train of thought, and in running from one train of thought to another; and adds, that maniacal persons are very irascible.'

3. *Item*, le case, per le cotien ley, que le roy avra les terres, est prie per feaans domage; carle tenant dyr. en le conclusion, domage fayt save le *foy* que jeo doy au roy; le quill prie quar le roy avra le preemynens all corps d'ome; et auxy le seign' ne poit maynt son villene, pur lentrest dell roy, &c. et ne se: a ydeott a aut houe destre in gard; car. per intendment quant aut gard vient a pley n age ill avra discrecyon de ruler ses terres, mez ideot nemi per intendement; et pur ceo le seign' serra ouste del gard de ideott per le roy, &c. ut supra.

4. *Item*, si l'escheator trouve qun est ydeott, le roy seissera; mes nemi sur nude suggestyon, mes si soyt trouve, virtute officii, cest *auxilor. pour\** le roy, ou per briefe, &c. Mesme le ley, si soyt trouve per comysion, &c.

5. *Item*, quand tiell office est retourne *virtute brevis*, a donques le ideot viendra in Chancery, per especial briefe, et serra examine la: mez ill avera *travers\** a dire quill nest ideott; purceo que le ley ne adjugera lui d'aver *comis* daschun chose pour son avantage et per ceo serra trouve per examination, &c. mez siun estrange avera *traverse* de ceo pur son disherison, &c. quod nota\*.

3 Also, the cause by the common law, that the king shall have the lands is prayed in doing homage, for the tenant shall say in the conclusion, homage done save the faith, that I owe to the king; because which he prays shall have the preeminence . . . and also the lord cannot maim his villien for the interest of the king; and likewise an ideot resembles not another man with respect to wardship; for by intendment when another ward comes to full age, he will have discretion to manage his lands, but ideot not so, by intendment; and, therefore, the lord shall be ousted of the wardship of an ideot, by the king.

4. Also if the escheator find that one is an *ideot*, the king shall seize; but not upon naked suggestion, but, if it be found *virtute officii*; or in aid for the king; or by writ, &c. The same is the law, if it be bound by commission, &c.

5. Also, although such an office is found by virtue of a writ, yet the *ideot* shall come into *chancery*, by special writ, and be examined there; but he shall have *travers* to say that he is not an *ideot*; for the law does not adjudge him to have cognizance of any thing, but for his benefit, and therefore it shall be found by examination; *but\** if a stranger he shall have a *traverse* of it for his *disherison*, &c. *quod nota*, &c.

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\* The passages marked thus are obscure in the original.



6. *Item.* Le statute parle, *quod rex habebit custodiam fatuorum naturalium*, &c. Donque sill tr. in le tayll, pur term de vie, ou pur term d'auter vie, ou a terme d'ans, *per elegit*, ou estutute merchaunt, le roi eux seisera; mez le roy ne eux gardera, durant sa vie, mez pour cy long terme come ill eux deins avera, sill fuit de bon memory, &c.

7. *Item*, si le *ideot* ad un annuitie, ceo n'est terre ne tenement; unc. le roy ceo avra purceo quill est un profyte all ideot, &c.

8. Donques le statut: parle merement des *necessaria*, &c. ceo serra intend, come le terme voet entend; sicome in manger et boyer, housbote, heybote, *victus et vestitus*; &c.

9. *Item*, signior *meine* et tenant, le *meine* est ideot, le roy avra le rents et profits de cestui; mez il navra homage, ne fealty; car ces corporell service apertyent all corps dell mein tenure; car null poit ceo accepter, sinon le persoun mesme, &c.

10. *Item*, si le roy ad un qui tient de auters seigniors, ill perdront leur homage et fealty, pur le temps; car *ideot* ne poit estre jure, &c.: mez ill poient suerpet petycion au roy pour lour rents, &c.

6. Also the statute says, that the king shall have the custody of *natural fools*, &c.; therefore, if the lands are held in tail for life, or for term of another's life, or for a term of years, *by elegit*, or statute merchant, the king shall seise the lands, but he shall not keep them during his life, but only for such term as he would have in them, if he were of sound memory.

7. Also, if the *ideot* has an annuity, this is neither land nor tenement, yet the king shall have it, because it is a profit to the ideot.

8. Although the statute speaks merely of necessities, &c: this shall be intended as the term may be intended; as, in meat and drink, *housbote, haybote, food and raiment*, &c.

9. Also, *meine* lord and tenant are, the *meine* is ideot, the king shall have the rents and profits of this latter, but he shall not have homage nor fealty; for those corporal services appertain to the body of the *meine* tenure, for no one can accept them, but the person himself.

10. Also, if the king has one who holds of other lords, they shall lose their homage and fealty for the time; for an *ideot* cannot be sworn, &c. But they may sue by petition to the king for their rents, &c.

11. Les paroix soynt "inveniat eis *necessaria*," &c. [Ceux parols seront confynes in tyell forme; si soyt home de grande sank, ill navera *draps* dore, mez de laine et navera XX hommes attendants sur luy, mez un ou deux, et n'avera sinon grand vyands come comen person &c sans wyne et delicatz, &c. Issint ill ne sera dit '*necessaria* accord: a son degree,' mez in ce chose serra accord a son degree; sicome Esqyer, ou gentylhome est fayt baron et ad [*cuculage*]\* [*tutulage*] [*entulage*] ill poit la *ap-procer* [appeller] accordant a son estat &c.

12. *Item*, si le Roy ad myll *lyvres* de terre d'un *Ideot*; il avera tous les profits, forc: solement sustenance dell ideot; car le statut est *capiendo exitus* &c.

13. *Item*, le statut parle *sine vasto et destructione* &c.; mez, si le roy fayt lease, le ideot n'avera remedye ne son heir nient plus; et si le ideot fait wast null remedy pur le roy; mez si le ideot ad terres per *terme de vie*, le roy fayt lease, nul remedy, messolement petition.

14. *Item* si le termor de vie face *wast* & est atteynt de felony, le roy avera le terre dur . . sa vie naturall; et sill face wast unc; cestui in reversion ne reavera le terre, dur: sa vye naturel; mez per petycion *pur uentry*\* ill serra recompence pour le wast.

11. The words are *inveniat eis necessaria* &c; these words shall be confined in such form; if he be a man of great blood, he shall not have cloth of gold, but of wooll, and he shall not have *twenty* men, attendants upon him, but *one* or *two*; and shall have only gross vyands as a common person, &c. without wine and delicacies, &c. So, it shall not be said necessities according to his degree; but in this it shall be according to his degree; as if esquire or gentlemen is made baron and has . . . he may app. . . according to his estate.

12. Also, if the king has a thousand pounds out of the lands of an *ideot*, he shall have all the profits; except only sustenance for the *ideot*; for the statute is *taking the issues*," &c.

13. Also, the statute says '*without waste and destruction*' &c. but if the king makes a lease, the *ideot* shall not have remedy, nor his heir any more than he; and if the *ideot* does waste, no remedy for the king; but if the *ideot* has land for term of life, the king makes a lease, no remedy, but only petition.

14. Also, if the termor for life commits waste, and is attainted of felony, the king shall have the lands during his natural life; and if he commits waste *again*, yet he in reversion shall not have the lands again during his natural life; but by petition . . . he shall be recompensed for the waste,

13. *Item*, home face les par term de xx anns, ou ses terres sont myse in execution per un estat merchant et ad issue un *ideot* et devi; le roy navra le issues come d'un gard<sup>e</sup>

16. *Item* signior et tenant soynt, le seigneur face lease per term de . . . anns et devie sanz heir; le seigneur ne outra le lessee, pour ceo quill claym fee per son entre, et *per cest act*<sup>\*</sup> leur anciens droitz ne pourront cest eaver; meiz loū le seigneur ne claym que guard autrement est, &c.

17. *Item* si 3 Joynt soynt, l'un est *ideot*, le roy seyssera tous, et les autres averont les terres in severalty per *petycion*; mes uncore le survyvor teigner lien coment que le roy ad un porcyon *apres* luy; car le joyntur: nest severe car si pr: *quod tere* soyt part de cest terre ill eo<sup>†</sup> [convient] estre part envers *tres tosts* et *pur ij* tons Meiz ij coparçeners, lun est *ideot*, le roy seissera come devant, et partycion est fayt *ut supra*, cest partycion est bon, pour ceo quil soynt compellable de fayre partycion, et accion port in le nom dun de eux est bon &c. *quod nota et quere* †

18. † *Item* indenture enter gard et cest est de *ideocy*

15. Also, a man makes a lease for twenty years, or his lands are put in execution by a statute merchant, and he has issued an *ideot* and dies; the king shall not have the issues as of a ward.

16. Also, lord and tenant are; the lord makes a lease for term of . . . years and dies, without heir; the lord shall not oust the lessee, because he claims the fee by his entry; and for that . . . their ancient rights cannot save it: but where the lord claims only ward it is otherwise, &c.

17. Also, if there be three joint-tenants, one is an *ideot*, the king shall seize all and the others shall have the lands in severalty by *petition*.<sup>\*</sup> But yet the survivor shall hold his lien, although the king has a portion after him; for the jointure is not severed, for if it appears that the land is part of that land it ought to be part against all three, and for all three. But if two coparceners are, one is an *ideot*, the king seizes as before, and *partition* is made as above; this partition is good, because they are compellable to make partition, and action brought in the name of one of them is good; which *note* and inquire into.

18. Also, indenture between guardian . . . of *ideocy*;

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\* N.B. All the passages marked thus, are so obscure, or so difficult that the editor cannot read them, and he dares not in any case hazard a conjectural emendation.

† Sic MS. not partition

car heir dell ideot aura liverie *una cum exitib*;—mesme le ley de iij jointenants ut supra, les ij avront liverie *una cum exit*: &c.: mez ij *coparceners*, l'un *deuye*. a plein age ell navra lyverie *una cum exitibus* &c. . . . q'uell affyrme le stat le roy, &c.

19. *Item*, si le ideott tyens de dyvers seigneurs, le roy n'aura rents des autres seigneurs, mez solement ceo que appertyent all ideott. &c.

20. *Item* le roy et son comytte et chascun autre home, poit justifier le chastis d'un home age pur le comun profyt &c.

21. *Item*, in dett sur obligacyon envers un *ideott*, ill ne poit dire, qu'ill fuit de non sain memorye, all temps de fesans d'ycell; mez son heyre et ses executors assez *bien sere ressu* &c.

22. *Item*, si un de bon memory et *ideott* sont oblygez, et accyon est port solement envers ceo de bon memory, le *dest* dit q'uill appert q'un autre est obligez joyntement ove lui &c. le *plaint*: ne dyr qu'ill est *ideot*, pour ceo quil mesme ne poit aver le ple; mez autrement est d'un, deins age, ou d'un moyne professe &c.

23. *Item*, home poet vouchen un qui *serra* evesque

for the heir of the ideot shall have liverie, together with the issues; the same law is of three joint tenants(is) as above; the two shall have liverie, joined her with the issues, &c. But two coparceners are, the one of them comes of full age, she shall not have liverie with the issues, &c. until that she confirms the estate of the king.

19. Also, if the ideot hold of divers lords, the king shall not have the rents of the other lords, but only those which belong to the ideot.

20. Also, the king and his committee and every other person may justify the correcting of a man of full age for the common profit [public good.]

20. Also, in debt on obligation against an ideot, he cannot say that he was of unsound memory at the time of making the same; but his heirs and executors also shall be received to plead it, &c.

22. Also, if one of sound memory and an ideot are bound, and action is brought against him of sound memory only, the defendant says that it appears, that another is bound jointly with him, the plaintiff shall not say that he is not an ideot, wherefore he cannot have his plea; but it is otherwise of one within age, or a monk professed, &c.

23. Also, a man may vouch one who is a bishop; but pro-

mes process cessera tanque le roy ad mand sa volunte &c.  
*Item*, un vouché en garde de roy, le paroll demur, tanque ill plein age &c.

24. *Item*, un ideott est vouch in gard de roy; le parol demurera dur: le vye le ideott.

25. *Item*, home est utl en trans: et vouch; le parol demur: tanque ill soyt restors; *querre* car le commen apprehension est contrary: mez, si un qui est know<sup>r</sup>, *per intervalla* soyt vouch; le paroll ne demurera mez *prier quod rec*: est bon envers lui, et ill n'avera eyd de roy; pur ceo que le roy n'avera rens in le terre a son use demesne; niez ill est sole tenant et jugement donne envers luy est bon &c. et le . . . . . poet aver exécution mayntenant; mes, si un ad jugement de rec: envers foll naturell, exécution; cessera durant sa vye naturell, &c.

26. *Item*, si un print feme, *inherite*, lunatyke, le roy n'avera custodi terre, pur ceo que son baron poet luy guyder &c.

27. *Item*, si home print feme foll naturell inhrite, le roy avera custodi terres, per ceo quill est intytle d'aver les profits a son opus demesne et son title comencera devant le title le baron: mez si ell soyt marrye in le vie launc: aut: est, come semble.

mess shall be stayed until the king has sent his pleasure, &c. Also one vouches, in ward, the king; the parol shall demur till he is of full age.

24. Also, an idiot is vouched in ward of the king, the parol shall demur during the life of the idiot.

25. Also, a man is outlawed in trespass, and is vouched; the parol shall demur; till he is restored; *querre*, for the common apprehension is the contrary. But, if one who is knowing at intervals is vouched, the parol shall not demur, but prayer that he may recover is good against him, and he shall not have aid of the king: because the king has nothing in the land to his own use, but he is sole tenant, and judgment given against him is good, and the demandant may sue execution against him, nevertheless, &c. But if one has judgment of recovery against a natural fool, execution shall be stayed during his natural life.

26. Also, if one take to wife an heiress, a lunatic, the king shall not have her lands, because her husband can guide her, &c.

27. Also, if a man take to wife a natural fool, an heiress, the king shall have the custody of the lands, because he is entitled to have the profits to his own use, and his title commenced before that of the baron: but if she was married in the life of the ancestor, it is otherwise, as it seems.

28. *Item*, home qui est lunatyke, *per intervalla*, &c. print feme foll naturall puis le . . mort *aunc* le feme; le roy avra le terre dell feme, et le terre le baron servera pour sustynance.

29. *Item* le statut: parle *et post mortem eorum reddat terram rectis heredibus*, &c. Une le statut ne sera prise si strateiment; si feme inherite prit baron ideott, le roy avra le terre, durant les espouselz; et si le baron devy, le feme avera le terre, &c.

30. *Item* home prit ideot a feme et averont issue, le feme devy, le baron serra tenant per le curtesy; et d'autre part, si ideott prit feme, ell serra *indow* apres sa mort, &c. et unc: ne so'. heires.

31. *Item*, si le puisne fitz trouve foll naturell et heir, leigne navera travers; mez sill soit trouye *ideott* et nient' heir l'eigne avra travers a cest, &c.

32. *Item*, lou le puisne est trouye *ideott* naturell et heir devi: son heire avra liverie, et nemi leigne frere, &c.

33. *Item*, si un ideott face feoffm'. et puis est trouye ideott, &c. le roy avra le terre durant sa vie naturell, et, apres sa mort, le feoffee avra liverie sicome lou le collusion est tr: in droit de garde, &c.

28. Also, a man who is a lunatic, at intervals, &c. takes to wife a natural fool, then the tenant dies, the ancestor of the wife; the king shall have the lands of the wife, and the lands of the baron shall serve for their sustenance.

29. Also, the statute says, "*and after their death shall render the land to their right heirs*," &c. yet, the statute shall not be taken so strictly; (*but*) if a *feme* inheritrix takes a *baron*, an *ideot*, the king shall have the land during the espousals, and, if the baron dies the feme shall have the land, &c.

30. Also a man takes an *ideot* to wife, and they have issue, the *feme* dies, the baron shall be tenant by the curtesy; and on the other hand, if *ideot* takes a *feme*, she shall be endowed after his death, &c. and yet, they are not heirs.

31. Also, if the *puisne* son is found a natural fool and heir, the *eigne* shall not have a travers; but if he is found ideot and no heir, the *eigne* shall have a travers of that, &c.

32. Also, where the *puisne* is found *ideot* by nature, and heir, and dies, his heir shall have liverie of the land, and not the brother *eigne*, &c.

33. Also, if an ideot makes a *feoffment* and then is found an ideot, &c. the king shall have the land during his natural life, and, after his death, the feoffee shall have livery, as if where collusion is found in writ of ward, &c.

84. *Item*, si soyt trouve q'un ssr. sf. *de accon*:\* terre fuit ideott et qun A lesee occupia, et puis A, que les occupia, vient en le chauncerye et monstrea que le ideott est mort, et pur ceo que son ideocy ne poet estre trie, ill prendra restytut: *una cum exitibus* et . . . . &c.

85. *Item*, tenant pur terme devie, le rem<sup>r</sup>: pur term devie, le rem<sup>r</sup>. in fee le tenant est trouve ideott et devie, cestui in le rem<sup>r</sup> avra liverie et nemi le heir &c.

86. *Item*, si le roy ad un *ydoyott* en gard et devie, son heir un idyott auxi, le roy navera demener . . . . pur ceo quill navera le garde racione tenure meze per cure dell person, corps, &c.

87. *Item*, sill soyt trouve que le tenant le roy est mort, et q'un tiell est son heir, et de pleyn age, et ad suy livery: et face wast, et puis est trouve idyott, le roy navera remedy pur cet wast, &c.

88. *Item*, si soynt x ideott heirs, chascun apres autres ill convient, apres le mort, de chascun daver novell office trouve, &c.

89. *Item*, lez estatiz: dez lunatyks et idyotts varient in dyvers poynts: un est, per case de ideocy le roy avra les profits durant sa vie naturel a son opus de mesme; meze

34. Also, if it be found that a . . . . . was ideot and that one A. a lessee occupies, and then A, who occupies comes into the chancery, and shews that the ideot is dead, and, therefore, his *ideocy* cannot be tried, he shall take restitution together with the issues, &c.

35. Also, tenant for term of life, remainder for life, remainder in fee are; the tenant is found *ideot* and dies, he in the remainder shall have liverie, and not the heir, &c.

36. Also, the king has an ideot in ward and dies, his heir an *ideot* also, the king shall not have . . . . . because he has not the ward *ratione* tenure, but on account of the person, corps, &c.

37. Also, if it be found that the tenant of the king is dead, and that such an one is his heir, and is of full age, and has sued liverie, and does waste, and then is found *ideot*, the king shall not have remedy for that waste.

38. Also, if there be ten *ideots* heirs, each after the other, it is fitting, after the death of each, to have a new office found, &c.

39. Also, the conditions of *lunaticks* and *ideots* differ in divers points; one is, on account of *ideocy*, the king shall have the profits during his natural life, to his own use; but of a *lunatick* he

d'un lunatyke ill n'avera forsque le gouvernance dell terre al opus del lunatyke. *Item*, le ideott ad sa memorye.

40. *Item*, de knowledge per intervalla, &c. ill convient all roy de truver luy et *familiam suam* accord: a son degree, quill fuit quant ill avra sa memorye; mez d'un idyott ill ne trouvera forsque sa person, et si le roy prist les profits des terres de knowing per intervalla, ill est mis a son petycion, &c.

shall have only the government of the land, for the use of the lunatick. Also, the idiot has his memory.

40. Also; of knowledge per intervalla, &c: It behoves the king to keep him and his family according to his degree which he was of (*shall be of*) when he had, (*shall have*) his memory; but of an ideot, he shall only find his person; and; if the king takes the land of one knowing, per intervalla, he shall be put to his petition.

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*Account of a Book of MSS. Readings (No. 5265) in the Harleian Collection of MSS. in the British Museum.*

THIS appears by a note in the first leaf to have belonged to Mr. Anstis, A. D. 1719; but whether it was wholly collected by him is uncertain. As the book is bound at present, it consists of several different collections of manuscripts in different hands, but from the similarity in the texture of the greater part of the paper, and the form of the margins, I presume the whole was collected together at the time of his note.

The contents are as follows:

ARTICLE I. fol. i.

- \* *The first Reading of Master Roger Manwood of the Inner Temple, on the Statute of the 23 Hen. VIII. cap. 3, read tempore quadragesimali, A. D. 1565, in the 7th year of Queen Elizabeth.*

The statute upon which this reading is made is entitled an act concerning the abridgment of plaints in assises, upon which he makes the following divisions:

1. How, and in what manner of assizes abridgment shall be by the purvieu of the said statute, and in what not.
2. How in other actions in nature of assize abridgment shall be, and in what not.
3. Before what justices, and in what court assizes

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\* In Latin.



shall be suffered to be abridged by this statute, and in what not.

This division is considered in three *Readings*, and in a *fourth* the *Reader* treats of what seigns are sufficient to have an assize by abridgment; in the fifth he treats of what forms and manners of writs of assize shall be sufficient, by the common law, or by statute, to have abridgment according to the statute, and what not: and what manner and form of *plaints* shall be sufficient, so that abridgment shall be according to the said statute.

In the sixth, he treats where on pleas in barr, being barrs *en fait*, the plaint shall be abridged by the statute, and where not; and where on other manner of pleas, *queux*, abridgment of the plaint shall be by the statute, and where not; and, lastly, in the 7th reading seeing the words are general, he shews what manner of *partes* to which the barr, deed or in law is pleaded might be abridged, before the making of the statute, and what not; and what manner of *partes* may be abridged within the purview of the statute, and what not.

The whole is very fairly written in law French and old running hand, and is very legible. It consists of twenty-six folios, and each folio contains about fourteen *items*, sections, or cases.

ARTICLE II. fol. 29.

*The Reading of Robert Mounson, Esq. on the Statute 2 and 3 Edw. VI. intituled an act for the true Payment of Tithes. August, 1565.*

THIS *Reading* begins with the following *division*, fol 29.

1. In what cases predial tithes shall not be in their proper kind as they *grow* and *happen*, but in such form as they have of right been paid within forty years before the statute, or of right and custom ought to be paid, the express words of the statute notwithstanding.

2. Also, in what cases such tithes shall be paid by that statute though none were paid, nor of right ought to have been paid within forty years, before the statute; and in what cases none shall be therefore paid, although they were continually paid for the space of forty years before the statute.

3. Also, in what cases such tithes† or of right payable within forty years; &c. may be taken and carried away out of places titheable, before the tenths thereof divided or set forth, on or without danger of forfeiture of treble value thereof; the express words of the statute to the contrary notwithstanding.

4. Also, what agreements shall be good to discharge such forfeitures, and between whom and what *parsons*, *vicars*, &c. shall have such by the laws and statutes of this realm.

Div. 1. § 1, fol. 29, a.—Of tithes paid in other forms than they were paid forty years before the statute.

§ 2, fol. 30, b.—None paid although they were paid before the statute.

§ 3, fol. 31, a. Tithes paid . . . although none were paid before the statute.

§ 4. fol. 32, a.—What agreements good, and with what *parsons*, *vicars*, &c.

Fol. 34, a. Second Lecture.—On the *proviso* of the statute, “no person shall be sued, &c.” and of the said prohibitions.

Fol. 38. a. Third Lecture.—What prescriptions or *privileges* are good to discharge the land of tithes, or of what manner of tithe by the statute, and what not.

Folio 40, b. Fourth Lecture.—In what cases the owners of cattle tithable, feeding and depasturing in such waste or common ground, shall not pay their tythes to the *parson*, *vicar*, &c. of the parish, hamlet, town, or place, where such owner inhabits; the express words of the statute to the contrary notwithstanding.

Folio 48, b. Fifth Lecture.—First, What shall be said *barren estate*, or *waste grounds*; within the meaning of the statute.

Also, in what cases barren estates or waste grounds converted into tillage or meadow shall pay tithes during six years after the conversion, and in what cases they shall pay none during such time, although they paid some before; (the express words, &c. *non obit*; and to what time the said seven years shall have relation.

Folio, 46, b. 6th Lecture.—Upon what *subscript* and *marks* of libells, and by what means exhibicions shall be

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† Sic. MS.

warranted and granted by this statute. Also, what suggestions are good, and what *dispositions* good proof of them; and what shall be honest and sufficient testimony in proof of them, and what not; and in what time they shall be exhibited. Item, 223.

*Lectura 7.* Upon the purview of 32 Hen. VIII. what temporal remedies are given for the recovery of tythes, &c. contained in the statute entitled an act for the true payment of tythes. *Imprimis*, what estates shall be said inheritances, and what not. Item, 245.

*Lectura 8.* *Imprimis*, what shall be said spiritual estates made temporal or held in temporal hands for lay uses within the intent and meaning of this statute and what not.

(247.) Also for what parsonages, vicarages, tythes, or other spiritual profits become temporal, &c. the temporal remedies shall be used, by that statute; and in what cases not. Item, 273.

*Lectura 9.*—*Imprimis*, what persons shall have the temporal remedies given by this statute, and against whom they lie.

Also in what the temporal remedies of the statute lie, and upon what disseisines or deforcements.

Also in what *demesnes* the temporal remedies of the statute may be without writ out of the chancery, or otherwise, although they are given by writ only, by the express words of the statute, the words thereof *niens obstant*. Item, 309.

*Lectura 10.*—*Imprimis*, what fines of parsonages, &c. and other assurances shall be good by this statute, and between what persons and to what things. Also on what writ of covenant or other things than writ of covenant fines may be levied of parsonages, &c. by the statute. Item, 333.

*Finis Lectarum Roberti Mounson Armigeri Lincolnienſis Hospitiſ et in Lincolnienſi comitatu nati et educati, 1565.*

### ARTICLE III.

*Prima Lectura Caroli Calthrope lectoris ibm termino trinitatis anno Regine Elizabethæ 16 de tenuris vulgo dict Copyholdes, (folio 61 a to folio 92 a.)*

THIS is a fair copy in English, of the same readings as I suppose, which has been several times published.

ARTICLE IV.

*Lectura Thomæ Broxhalme tempore autumnali An. 38 Eliz.  
in Greys Inne.*

THIS is a reading in Law French on the stat. 14 Eliz. c. 8. It is contained in the 99d and intermediate pages to the 115th, inclusive.

ARTICLE V.

*De quo warranto.*

THIS is a reading upon the above subject, the author of which is not mentioned. It commences thus:

*Spilman cest bre de quo warranto trier le liberty, &c.*

It extends from folio 117, a, inclusive, to folio 133, a, inclusive.

A reading on this subject is referred to in *Bro. Abr. quo warranto*, 12. I have also in my possession a book of readings belonging to *Francis Hargrave*, Esq. which contains a reading on the statute of *quo warranto*.

Which of them is the reading referred to I have not been able to ascertain.

The volume which we have been abstracting contains several other curious tracts, of which an account will be given hereafter.

TO THE EDITOR.

*On Mr. Sedgwick's Remarks on Blackstone's Commentaries.*

SIR,  
**I** HAVE long been an admirer in common with every English lawyer, and I may add every man of letters, of the excellent Commentaries of Sir *W. Blackstone* on the Laws of England; and was not a little surprised to find that Mr. *Sedgwick*, who has published some Remarks upon the first volume of that excellent work, had discovered so many occasions to differ from it. It would indeed be matter of great regret if a book of such general utility, and which is now the source from which every student derives his first knowledge of the principles of our law, should be found to be in any material degree inaccurate and erroneous. I had always thought that its real character was the reverse of this, that it was not only elegant and fascinating in its style, but profound and accurate in its doctrines; and this opinion I still entertain, notwithstanding the ingenuity which Mr. *Sedgwick* has displayed in his attempt to prove the fallacy of many of the learned commentator's positions. The style of this writer is, however, very well calculated to dazzle and to mislead; and probably many of his readers who have not deeply weighed his criticisms may have risen from the perusal of them with a conviction that Sir *W. Blackstone* is no longer to be considered the safe guide to the student that he has hitherto been deemed. But a little reflection convinced me, that it is the critic himself who is in error, and not the commentator; and during the leisure of the last long vacation, having had an opportunity of giving Mr. *Sedgwick's* Remarks an attentive perusal, I set down in the margin of his work, such observations as occurred to my mind, and which appeared to me to amount to a refutation of his arguments. A few pages of these observations I have copied, and now inclose for your perusal; and if you think from this specimen that the whole would be acceptable to your readers, the remainder also shall be transcribed and remitted to you without delay; should they be published, I hope and trust that they will have the effect of vindicating the Commentaries, and have a tendency to restore to the student and to confirm that confidence which it is so essential that he should feel in

an author whose work is the first book that usually is, and the best that possibly can be recommended to his attention.

I am, Sir,

*Lincoln's Inn,*  
Nov. 20, 1805,

Your humble Servant,  
A CONVEYANCER.

WE are so well satisfied of the abilities of our correspondent from the specimen he has sent us, that we shall readily accept his offer of these observations and vindication of the Commentaries.

We are the more grateful to him for his communication, because we have long been desirous of seeing the Commentaries elucidated by occasional Essays under the title of *Blackstoniana*. The arrangement and style of the Commentaries is so excellent, so lucid, and so clear, that perhaps it would be impossible to find a better model or a more convenient plan for a general examination of the elements and principles of the law in a form more elegant and more artificial, than are the general collections of cases called Treatises on distinct Parts of the Law.—With respect to Mr. S. the author of the Remarks above alluded to, we know him to be not less candid and ingenuous in his opinions, than he is acute in his reasonings and flowing and captivating in his style; and we are much mistaken if a strict yet liberal and candid inquiry into his positions will be less acceptable to him than it is to our readers.

As the observations of our correspondent will necessarily run to some length, we must unavoidably postpone the insertion of them till the commencement of our next volume.

END OF VOL. FOR 1805.

W. FINE, Printer,  
Green Arbour court, St. Sepulchre's.

## BANKRUPTS,

*Declared in the London Gazette, from Feb. 2, 1805,  
to Feb. 26, 1805.*

[The Solicitors' Names, and Dates of the Gazette, are pre-  
ceded by a Crotchet.]



Allingham Benjamin, of Berwick street, Soho, picture dealer. [Beckett, Broad street, Golden square. February 2.  
Ainsworth George, of Warrington, Lancashire, coppersmith. [Rowlinson, Liverpool. February 16.  
Arrowsmith James, of Richmond, Yorkshire, upholsterer. [Macfarlan, Richmond. February 19.

Boulton George, of Prickler's hill, East Barnet, Hertfordshire, farmer. [Wright and Bovill, Chancery lane. February 2.  
Booth Banks, of Salford, Lancashire, merchant. [Chesshyre and Walker, Manchester. February 5.  
Bryan Joseph, of Little Britain, dealer. [Godmond, Crescent, Bridge street. February 6.  
Barker William, of the Strand, linen draper. [Maddock and Stephenson, Lincoln's Inn, New square. February 9.  
Barrow George, of Hanforth, Chester, swailer. [Holland King street, Manchester. February 12.  
Byrne George, Exeter street, Chelsea, hat maker. [Parker, Young, and Hughes, Essex street, Strand. February 12.  
Bass John, of Woodford, Essex, victualler. [Martin, Vintner's hall, Upper Thames street. February 16.  
Bell John, of Old City Chambers, wine merchant. [Swain and Stevens, Old Jewry. February 16.  
Burke Joseph, of Cannon street, merchant. Flashman, Ely place, Holborn. February 16.  
Brownson Benjamin, of Parwich, Derbyshire, dealer. [Barber and Browne, Fetter lane. February 16.  
Bond Richard, of Worcester, patten maker. [Allen, Sidbury. February 19.  
Barret Thomas, of Kennington green, stock broker. [Bousfield, Bow-erie street. February 23.  
Butharoyd Jonathan, of Manchester, wheelwrights. [Creswell, Manchester. Feb. 23.

Chapman Nathaniel, William Mellor, and Robert Mellor, of Stockport Cheshire, cotton manufacturer. [Chilow and Stone, Macclesfield. February 5.  
Cornwell William, of King David's Fort, St. George in the East, ropemaker. [Finchett, Prescot street, Goodman's Fields. February 9.  
Coxter John, of Witney, Oxfordshire, and Newbury, Berkshire, blanket manufacturer. [Mangnall, Warwick-street, Newgate-street. Feb. 23.

## *Bankrupts.*

- Denman George Frederick, Strand, Middlesex, jeweller. [Pullen, Fore street. February 2.
- Dixon Edward, of Grewelthorpe, Yorkshire, butcher. [Harrison and Cartman, Ripon. February 9.
- Davison Andrew, of Chester, wine merchant. [Royle Chester. February 16.
- Davies Daniel, of Chester, cheesemonger. [Jones, Chester. February 16.
- Dennett George, of Gray's Inn lane, cowkeeper. [Darby, Gray's Inn square. February 19.
- Dewdeny Benjamin, sen. of Linkfield street, Reigate, Surrey, horse dealer. [Burt, Reigate. February 23.
- Day Edward, of Collingborne, Davis, Wiltshire, Farmer. [Deadman, Pewsey, Wiltshire, February 23.
- Dixon John, of Ashby de la Zouch, Leicestershire, fellmonger. [Adams, Old Jewry. February 26.
- Dexter Stephen, of Belpar, Derbyshire, linen draper. [Clough, Manchester February 26.
- Estlin Nathaniel, of Hinkley, Leicestershire, hosier. [Jervis, Hinckley. February 9.
- Evans William Morley, of Mark lane, broker. [Mathew, Lower James street, Golden square, February 23.
- Fourness Robert, late of Gainsborough, Lincoln, ironfounder. [Walier, Chesterfield. February 2.
- Fisher, Edward of Manchester common brewer. [Nabb, Manchester. February 9.
- Farmer Thomas Bevan, of Rotherhithe, carpenter. [Pringle and Washbrough, Greville street, Hatton Garden. February 9.
- Franck George, of Blackman street, Borough, wine merchant. [Wilson, Devonshire street, Bishopsgate. February 16.
- Fitton Elizabeth, of Bolton on the Moors, Lancashire, milliner. [Eyre, Furnival's Inn. February 23.
- Purle Samuel, of Drury lane, victualler. [Smith and Co. Great St. Helen's, Bishopsgate street. February 26,
- Gilbert Joseph, of Bristol, merchant. [Stephens, Bristol. February 5.
- Gooch Thomas and James Jackman, of Exeter, hosiers. [Turner, Exeter. February 16.
- Goodyear William, of Shepherd street, Oxford street, bricklayer. [Fothergill and Co. Old Broad street. February 19.
- Gayford Robert, jun. of Dunwich, Suffolk, shopkeeper, [Mitchell, Saxmundham. February 19.
- Hoggray John, of Leather lane, victualler. [Hodgson, Clement's Inn. February 9.
- Hooper, Rachael, of Bath, milliner. [Berry, Walbrook. February, 9.
- Ingledeu Silvester, of Huddersfield, York, linen draper. [Coupland, Leeds. February, 16.
- Jackson John, of Liverpool, Lancashire, merchant. [Blackstock, Liverpool. February 5.
- Judin Frederick, otherwise Fedor Irvan, of Judin, of Hatton garden, Middlesex, merchant. [Gregson, Angel court, Throgmorton street. February 9.
- Jones William, of Newnham, Gloucestershire, drover. [Stoke, Chepstow. February 16.
- Jeffery Henry, of Weymouth, linen draper. [Baynton, Bristol. February 19.
- Jackson Richard, of Shoe lane, Fleet street, smith. [Walton, Girdler's hall, Basingall street. February 23.



## *Bankrupts.*

Kiss William David, of Birmingham, money scrivener. [Charter, Printers street, Earl street. February 19.

Large John, of Allesley, Warwick, dealer and chapman. [Watts, Kenilworth. February 2.

Lindley John, of Sheffield, cutler. [Sargant, Sheffield. February 2.

Lowe Edward, of Shrewsbury, warehouseman. [Redding, Worcester. February 26.

Morris Robert, late of Wigan, Lancaster, cotton manufacturer, [Baron, Wigan. February 2.

Mouat Daniel, of Liverpool, merchant. [Orred, Liverpool. February 2.

Mace William, of Wimpole street, St. Marylabonne, fruiterer. [Hughes, Cross court, Long acre. February 2.

Newton John, of Birmingham, brazier. [Barker and Unett, Birmingham. February 2.

Oliver William, of Carnarvon, shopkeeper. [Orred, Liverpool. February 2.

Pierce Thomas Ibbott, of Lime street, merchant. [Palmer and Tomlinson, Warnford court, Throgmorton street. February 2.

Pitt William, of Wolverhampton, timber merchant. [Price, Wolverhampton. February 2.

Pain Alexander, Stow on the Wold, Gloucester, draper. [Brookes, Stow on the Wold, Gloucestershire. February 9.

Potten Arthur, of Duke street, Aldgate, woollen draper. [Swan and Co. Fore street, Cripplegate. February 19.

Poole Robert, of Prospect place, St. George's Fields, linen draper. [Russell, Lant street, Southwark. February 22.

Payne Thomas, of Ashford, Kent, grocer. [De Lassaux, Ashford. February 26.

Rowes Ralph Clark, of Newcastle upon Tyne, ship owner. [Unwin, Shadell. February 5.

Rachael Hooper, of Bath, milliner. [Berry, Walbrook. February 9.

Richardson Richard, of Page's Walk, Bermondsey, glue maker. [Mawley, Bell Savage yard, Ludgate hill. February 16.

Reddel Isaac Hadley, of West Bromwich, Staffordshire, ironfounder. [Bird, Birmingham. February 19.

Regnart Philip, of Old Cavendish street, Marylabonne, carver. [Carrington, Mount street, Grosvenor square. February 23.

Robinson James, jun. of Liverpool, merchant, [Cukit, Liverpool. February 26.

Sargant Joseph, of Russia court, Milk street, warehouseman. [M'Michael, Finch lane, Cornhill. February 5.

Stevens Samuel, of Monmouth, barge owner. [Stokes, Chepstow. February 16.

Spencer Thomas, of Manchester, cotton manufacturer. [Partington, Manchester. February 23.

Turner Joseph, of Stockport, Cheshire, cotton spinner. [Basnett, Manchester. February 5.

### *Bankrupts.*

- Thompson William, Throgmorton street, stock broker. [Jopson, Castle street, Holborn. February 9.
- Thorp John, of Newton, Lancashire, and William Whitfield Paul, jun. of Manchester, calico printers. [Nabb, Manchester. February 19.
- Tabrum Robert, of Shopland, Essex, dealer. [Tindall, Chelmsford, Essex. February 23.
- Vickers, Jane, of Bath, milliner. [Taylor and Co. Bath. February 26.
- White Thomas, of Chesterfield, Derby, bookseller. [Thomas, Chesterfield, February 2.
- Watson Alexander, of Liverpool, stone mason. [Bardswell, Liverpool. February 2.
- Wright Thomas, of Marham, Norfolk, dealer. [Fuller, Brandon. February 5.
- Woolley Francis, of Charles street, Grosvenor square, Middlesex, apothecary. [Nelson, Maddox street, Hanover square. February 9.
- Wells Edward, of Oxford, liquor merchant. [Morland, Adingdon. February 9.
- Watkins Maria, late of Wells, Somerset, milliner. [White, Philpot lane, Fenchurch street. February 9.
- Woodcock Thomas, of Appleton in the Moors, York, corn merchant. [Petch, Kirbymoorside, York. February 12.
- Wilkinson Graham, late of George street, Hanover square, money scrivener street, Golden square. February 12.
- William Williams, of Castle street, Leicester square, Middlesex, oilman. Nelson, Pabgrave place, Strand. February 16.

## BANKRUPTS,

*Declared in the London Gazette, from Nov. 6, 1804, to  
Jan. 29, 1805.*

[The Solicitors' Names, and Dates of the Gazette, are preceded  
by a Crotchet.]



Allen John, of London road, St. George's fields, money scrivener. [Allen, Clement's Inn. December 1.  
Abbot John, of Ipswich, shopkeeper. [Walker, Exchequer Office, Lincoln's Inn. January 26.

Beaune De David, of Great Winchester street, insurance broker. [Atcheson and Morgan, Austin Friars, London. November 13.

Brown Thomas, the younger, of Mile End, Rickmansworth, Hertford, tanner, [Woodward, Hillingdon heath, Middlesex. November 17.

Bowmer John, of Brampton, Lincoln, tanner. [Godd, Gainsburgh. November 17.

Burnane William, of Manchester, Lancaster, fruiterer. [Foulkes and Mignon, Manchester. November 17.

Buxton Alice, of Manchester, machine maker. [Hewit, Manchester; and Ellis, Cursitor street. November 20.

Brown George Bagshaw, of Newport, Salop, glazier. [Baxter and Martin, Furnival's Inn, London; and Stanley, Newport, Salop. November 20.

Batson William, Oxford, chinaman. [Roberson and Tonies, Oxford. November 24.

Barrett John, of Northumberland street, Strand, victualler. [Templer, Bury street; East Smithfield. November 24.

Bowen Thomas, of Charing Cross, watch maker. [Harrison, Northumberland street, Strand. December 4.

Bush George, of Bristol, chymist. [Cooke, Bristol. December 4.

Bell James, of Conningsby, Lincoln, miller. [Wilson, Castle street, Holborn. December 4.

Beaumont John, of Dorset street, Spitalfields, cabinet maker. [Russen, Crown court, Aldersgate street. December 8.

Bridcoake John, of Bedford, near Leigh, Lancashire, cotton manufacturer, [Parr, Manchester. December 8.

Birch Elizabeth, William Birch, and William Marsh, of Fleet street, paper stainers. [Jones, New court, Crutched Friars. December 8.

Bowden Richard, of Manchester, manufacturer. [Cheshyre and Walker, Manchester. December 15.

Baldwin William, of Holt, Norfolk, grocer. [Whithers, jun. Holt. December 18.

Baker Hugh, of Bristol, tailor. [Leman, Bristol. December 18.

Baxter John, of Harwich, linen draper. [Brame and Co. Ipswich, December 18.

## *Bankrupts.*

- Barr John, of Wantage, Berkshire, money scrivener. [Ward, jun. Farringdon, Berks. December 18.
- Burrough John, Red Lion street, Spitalfields, baker. [Evans, Thavies Inn. December 22.
- Baker John, of Holborn, linen draper. [Parry, Thavies Inn, London. December 25.
- Burnit James, Mere, Wilts, cheesefactor. [Messiter, Wincanton. January 12.
- Beck John, Bridgwater, Somerset, ironmonger. [Cole, Bridgewater, January 19.
- Bigwood John, of Basinghall street, warehouseman. [Field, Cheapside. January 26.
- Bell Michael, of Monkgate, York, oil merchant. [Munby, York. January 26.
- Barlow James, of Monmouth street, tallow chandler. [Makelock, Elm court, Temple. January 26.
- Cole George, of Woodbridge, Suffolk, butcher. [Mitchell, Saxmundham, Suffolk. November 17.
- Campion John, of Netton, Worcester, wire manufacturer. [Smith, Birmingham; and Cove, Holborn court, Gray's Inn. November 20.
- Clark Folliot, of Coventry street, hosier. [Holmes, Old square, Lincoln's Inn. November 27.
- Carr John, of Bishop Wearmouth, Durham, cabinet maker. [Thompson, Bishop Wearmouth. November 27.
- Cox Joseph, of Gravel lane, Surrey, carpenter. [Meymott, Charlotte street, Blackfriar's road, Surrey. December 1.
- Coulthard Joseph, of Bell Wharf, Lower Shadwell, victualler. [Wild, Warwick square. December 8.
- Corbet William, of Gray's Inn, money scrivener. [Roberts, Ely place, Holborn. December 11.
- Coulson John, Crown street, Finsbury square, grocer. [Gatty, Angel court, Throgmorton street. December 22.
- Carpenter John, of Thetford, Norfolk, dealer and chapman. [Dugmore, Thetford; and King, Took's court, Chancery lane. December 15.
- Cuff William, of Smithfield Bars, hardwareman. [Thomas, Bear binderlane. December 15.
- Chalklen William, Deptford, draper. [Hurle, Cloak lane, London. December 22.
- Cooper Samuel, of Bredfield, Suffolk, miller. [Mitchell, Saxmundham. December 25.
- Cattermole John, of Baldwin's gardens, Gray's Inn lane, victualler. [Harvey, Cursitor street, Chancery lane. January 1.
- Cripps John Gordon, Bury St. Edmunds, Suffolk, grocer. [Pate Bury St. Edmunds. January 12.
- Croft Laurence, St. James's, street, St. James's coffee house keeper. [Reilly, Stafford row, Buckingham gate. January 19.
- Cooper James the younger, Barking alley, Tower Hill, merchant. [Pullen, Fore street. January 26.
- Cheek Henry, of Richmond, Surrey, linen draper. [Tilbury and Bedford, Bedford row. January 29.
- Disting William, of Plymouth, Devon, tallow chandler. [Ludlow and Richardson, Monument yard. Nov. 17.
- Davies Richard, of Castle street, Long Acre, broker. [Hughes, Cross court, Long Acre. November 24.
- Downham William, of Heaton Norris, Lancaster, timber merchant. [Hudson, Stockport. December 4.
- Derbyshire John, of Witton, Cheshire, innkeeper. [Daunville, Knutsford. December 18.

### *Bankrupts.*

Dawson Robert, of Oxford street, linen draper. [Vines, New square, Lincoln's Inn. December 25.

Espenor Charles, of Kingston upon Hull, woollen draper. [Codd and Garland, Kingston upon Hull. December 1.

Epworth John, of White Rose court, Coleman street, jeweller. [Beetham, Bouverie street. December 8.

Ewin James, of Wood street, warehouseman. [Gregson, Angel street, Throgmorton street. December 15.

Evil Mark, late of Tiverton, Somerset, common brewer. [Taylor and English, Bath. December 22.

Evans John, of Blackman street, Borough, linen draper. [Taylor, Mortimer street. January 26.

Enock William, of Southmolton street, Oxford street, tailor. [Taylor, Mortimer street, Cavendish square. January 26.

Fisher Henry, late of Hawkurst, Kent, tailor. [Waterman, Tenterden. November 27.

Featherstone Joseph, of Tunbridge, Kent, shopkeeper. [Hall, Castle court, Judge row. December 1.

Finnings John, of Sculcoates, Yorkshire, cooper. [Jackson, Hull. December 1.

Fowler William, of Rochester, dealer. [Smedley, Aldersgate street. December 18.

Fell Isaac, of Newcastle upon Tyne, tobacconist. [Donkin, Newcastle upon Tyne. January 26.

Flinders William, of Boston, Lincolnshire, ironmonger. [Thirkle, Boston. January 8.

Francis William, of Canterbury, hop merchant. [Plummer, Canterbury. January 19.

Gale Isaac, of Basinghall street, factor. [Pullen, Fore street, Cripplegate. November 13.

Gibson Richard Henry, of Ratcliffe row, St. Luke, Middlesex, dealer. [Mayhew, Lower James street, Golden square. December 1.

Grinrod James and Michael Guest, of Lancaster, cotton merchants. [Foulkes and Higson, Manchester. December 4.

Gerris John Charles, of the Circus, Minorities, merchant. [Berridge, Bartlett's buildings, Holborn. December 15.

Goodman William, of Wolverhampton, tin plate worker. [Smith, Wolverhampton. December 18.

Gardner Franklin, of Deptford, mariner. [Blunt, Old Pay office, Broad street. December 15.

Garland Matthew, Grove street, Deptford, victualler. [Sherwood and Parrel, Canterbury square, Southwark. December 22.

Gardner James, of Newcastle under Lyme, ironmonger.

Griffiths John, of Merthyr Tydfil, Glamorgan. [Davis, Bristol. December 29.

Halton Joseph, of Stockport, county of Chester, cotton spinner. [Partington, Marsden square, Manchester. November 10.

Haward Samuel, the younger, of Halesworth, Suffolk, grocer. [White and Woodcock, Halesworth. November 17.

Hawkesworth William, of the Strand, Middlesex, linen draper. [Reardon, Corbett court, Gracechurch street. Nov. 17.

Hodgson Joseph, of Haze, Lincoln, taylor. [Pearson, Doncaster; and Bleasdale and Alexander, New Inn. November 24.

## *Bankrupts.*

- Hawkins James, the elder, Rotherhithe wall, boat builder. [Sheppard, Deane street, Tooley street, Southwark. November 24.
- Hull Luke, of Wharton, Warwick, jobber. [Owen, Atherstone; and Tebbatt, Staple Inn. November 24.
- Hulbert Richard, late of Chippenham, Wilts, linen draper. [Harvey, Chippenham. November 27.
- Hart Samuel, of Swaffham, Prior, Cambridge, dealer. [Edward, Weatherby, Newmarket, December 1.
- Harris Joseph, of Keynsham Somerset, tanner. [Daniel and Son, Bristol; and Pearsons, Pump court, Temple. December 11.
- Higgs Daniel, of Chipping, Sodbury, Gloucester, liquor merchant. [Jenkins, James, and Co. New Inn, London; and Whittingham, Chipping, Sodbury, Gloucestershire. December 11.
- Hamilton Samuel, of Shoe lane, printer. [Wright and Bovill, Chancery lane. December 15.
- Hancox William, the younger, of the parish of Pen, Stafford, sheep and pig dealer. [Biddle, Wolverhampton. December 22.
- Hunt Stephen, of Croadall, Southampton, tanner. [Ragget, Odiham. December 25.
- Hobby William, of Kingston, Herefordshire, innholder. [Bach, Leominster. December 29.
- Hughes John, of Liverpool, draper. [Hewit, Manchester. December 29.
- Hodgson John Cook, John's row, St. Luke, Middlesex, builder. [Kinsey, Furnival's Inn. January 12.
- Mymans Marcus, Exeter street, Strand, leather manufacturer. [Phillipson, Holborn court. January 19.
- Hawkins Benjamin, of Birmingham, merchant. [Burrish and Palmer, Birmingham. January 26.
- Hoare Peter, of Brockham green, Surrey, shopkeeper. [Broad, Union street, Southwark, January 29.
- Jowett John, of Manchester, manufacturer. [Halstead and Ainsworth, Manchester. November 6.
- Johnson George, of South suburbs, Chichester, Sussex, carpenter. [Dally, Chichester. December 1.
- Jarman Charles, and James Atwood, of Oxford street, shoe makers. [Bower, Clifford's Inn. December 15.
- Jones William, of Strangford, Herefordshire, dealer in cattle. [Allen, Hereford. December 18.
- James Henry, late of St. Mary Axe, merchant. [Carter, Staple's Inn. December 22.
- Keene William, of Painswick, Gloucestershire, clothier. [Okey, Gloucester. January 15.
- Kiernan Thomas, of Gray's Inn, money scrivener. [Wimburn and Collects, Chancery lane. January 22.
- Lloyd Hugh, of Middle Temple lane, money scrivener. [Poole, Sergeant's Inn Fleet street. November 13.
- Lewtas Matthew, the younger, of Liverpool, merchant. [Leigh, Basnett street, Liverpool. November 20.
- Lindsey George, of Bermoudsey New road, tanner. [Saunders and Judkin, Clifford's Inn. November 24.
- Lawton John, of Liverpool, boot and shoe maker. [Morrow, King street, Liverpool. December 1.
- Lightfoot Thomas, Lawton, Lancaster, manufacturer. [Edge, Brown street, Manchester. December 22.

## *Bankrupts.*

Matthews Thomas, of Bristol bookseller. [Hartley, Bristol. November 10:  
Mallone Matthew, of Manchester, innkeeper. [Sharpe and Eccles, Manchester.  
November 27.

Metcalfe John, of Bedale, York, glazier. {Dyneley and Sons, Gray's Inn, and  
Morton, Bedale. December 15.

M'Donnall Owen, of Bennett street, St. James's, victualler. [Simpson and  
Hastles, King's Bench walk, Temple. December 15.

Mills John Patrick, of Ford street, Colchester, shopkeeper. [Brown, Little Friday  
street. December 18.

Moggridge William, of Uxbridge, ironmonger. [Hedley, Sir William Warren  
square, Wapping. January 22.

Mayhew John, the younger, of Wigmore street, Cavendish square, cabinet maker.  
[Walton, Girdler's Hall, Basinghall street. January 22.

Matthew Thomas, of West Cowes, silversmith. [Blake and son, Cook's court,  
Carey street. January 26.

Norton George, of Wild street, Lincoln's Inn fields, carpenter, [Blandford and  
Sweet, King's Bench Walk, Temple. December 4.

Newton James, of Oldham, Lancashire, innkeeper. [Sharpe and Eccles, Man-  
chester. November 10.

Nott Thomas Bach, of Corse, Gloucestershire, money scrivener. [Rickards,  
Ledbury. December 25.

Nixon John, Duke's place, Pimlico, carpenter. [Turner, Featherstone buildings,  
Bedford row. January 22.

Orpwood Thomas, of Fleet street, tailor. [Cannon, Leicester place, Leicester  
square. November 6.

Oldfield Thomas, of Bolton le Moors, Lancashire, innkeeper. [Cross, Bolton  
le Moors. November 17.

Oxenham William, of Exeter, tallow chandler. [Campion, Exeter. Decem-  
ber 11.

Osborne Charles, of Wapping street, surgeon. [Mason, Great Prescott street,  
Goodman's fields. December 18.

Prior Robert, of Gloucester street, Hoxton, grocer. [Jopson, Castle street, Hol-  
born. January 8.

Purcell John, Portland street, Middlesex, grocer. [Pasmore, Old Broad street.  
January 12.

Penington Henry, of Liverpool, money scrivener. [Stanistreet and Eden, Leigh  
street, Liverpool. January 22.

Piper James, of Birmingham, innholder. [Lowe, Birmingham. November 6.

Poole Joseph, of Oldham, Lancaster, cotton spinner. [Cheshyre and Walker,  
Manchester. November 6.

Paris John Sawyer, of Aldwinkle, Northampton, victualler. [Mawley, Bell  
Savage square, Ludgate hill. November 27.

Price Robert, Cannon street, stationer. [Orchard, Hatton garden. December  
22.

Phillips John, of Liverpool, merchant. [Bond, Leicester. December 25.

Percey Robert Leaper, of Charles square, Hoxton, stock broker. [Ellis, Abingdon  
street, Westminster. January 5.

Page James, Kidderminster, innkeeper. [Hore, Garlick Hill, Cheapside.  
January 26.

Payne William, of Ipswich, Suffolk, coach and harness maker. [Gross, Ipswich ;  
and Bromley and Bell, Gray's Inn. January 29.

Rowe Isaac, of Mile End green, mariner. [Dann, Broad street. Novem-  
ber 13.

Roby Samuel, and Edward Roby, of Wood street, Cheapside, hosiery. [Daws,  
Angel court, Throgmorton street. November 10.

## *Bankrupts.*

- Rositer Edward**, of Frome Selwood, Somersetshire, clothier. [Chislett, Frome. November 17.]
- Randolph John Meeham**, of Birmingham, money scrivener. [Dolphin, Birmingham. November 17.]
- Running William**, of Stamford, linen draper. [Evans, Goswell street, November 24.]
- Roberts Francis**, of Saint Martin's court, mercer. [Fothergill, Clifford's Inn, Fleet street. November 27.]
- Richards Fenting Theophilus**, of Bath, baker. [Skurray, Bath. November 27.]
- Robinson George and John Robinson**, of Paternoster row, booksellers. [Wright and Bevil, Chancery lane. December 8.]
- Racey James**, of Bath, dealer. [Foreman, St. James's Parade, Bath. December 25.]
- Rowe Richard**, of Granchester, Cambridgeshire, gardener. [White, Cambridge; and Ouel, Winsley street, Oxford street. January 1.]
- Sizer John**, of Mainingtree, Essex, shopkeeper. [Ambrose, Mistley. November 6.]
- Symons Benjamin Abraham**, the younger, of Billiter lane, merchant. [Williams and Sherwood, Bank street, Cornhill. November 13.]
- Sims Edward**, of Dursley, Gloucestershire, common brewer. [Wheatstone, Dursley. November 17.]
- Sewell Joseph**, of Manchester, joiner. [Milne, Manchester; and Ellis, Currier street. November 24.]
- Simpson Archibald** of Princes street, Soho, watch maker. [Robinson, Charterhouse square. November 27.]
- Stephenson Robert**, of South Shields, baker. [Bainbridge, Newcastle. December 1.]
- Shawcross William**, of Romily, Chester, John Tomlinson, of Manchester, and James Consterdine, of Denton, Lancaster, cotton spinners. [Partington, Manchester. December 4.]
- Salisbury John**, of Manchester, cotton spinner. [Johnson, Manchester. December 15.]
- Simpson Francis**, of Lancaster, merchant. [Bleasdale and Alexander, New Inn, and Willia, Lancaster. December 15.]
- Simpson John**, of Liverpool, merchant. [Blackstork, St. Mildred's court, Poultry; and Kirkpatrick, Hanover street, Liverpool. December 15.]
- Smith Elizabeth**, of Well's street, Oxford road, linen draper. [Jones, Bernard's Inn. December 18.]
- Shenstone John Michael**, of Portsea, Southampton, salesman. [Compigne, Gosport. December 18.]
- Sellars George**, of Sheffield, cabinet maker. [Evans, Sheffield. December 28.]
- Shenston John Michael**, of Portsea, Southampton, salesman. [Compigne, Gosport. December 29.]
- Squer Joseph**, of Exeter, tallow chandler and soap boiler. [Philips and Gear, Exeter. January 1.]
- Simpson Alexander**, of Nottingham, cordwainer. [Cutts and Sanders, Nottingham, and Magdougall and Hunter, Lincoln's Inn. January 5.]
- Smithies William**, and Joseph Smithies, of Leeds, Yorkshire, merchants. [Shelton, Leeds. January 8.]
- Smith Benjamin**, the younger, and John Cherry, Red Lion street, Middlesex, watch manufacturers. [Coots Austin friars. January 12.]
- Shaw Thomas**, of Chelmsford, Essex, china earthenwareman. [Hodgson, Holborn court, Gray's Inn. January 19.]
- Sims George**, late of Stephen street, Tottenham court road, merchant. [Dixons, Nassau street, Soho. January 22.]
- Thornton John**, of Leeds, innholder. [Lee, Leeds. November 10.]
- Taylor Edward**, and James Taylor, of Clapham, Surrey, builders. [Patten, 1, Cross street, Hutton street. November 10.]



## *Bankrupts.*

Tanfield George, of the Strand, victualler. [Fryett, Mill Bank street, Westminster. November 27.

Thornton Edward, of Stroud, Gloucestershire, apothecary. [Newman, Stroud-December 8.

Taylor John, of Chatham, Kent, wine merchant. [Tyrral and Francis, Guildhall. January 26.

Vernon Thomas, of Sedgely, Stafford, ironmaster. [Bourne, Dudley. November 17.

Webb John, of Homerton, Middlesex, wine merchant. [Impey and Wightman, Inner Temple lane. November 6.

Willis James, and Charles Hobbs, Whitechapel road, distillers. [Parnther, London street, Fenchurch street. November 10.

Williams Edmund, late of Salford, Lancashire, timber merchant. [Edge, Back-square, Manchester. November 10.

Wilson Joseph, of St. George's Fields, umbrella maker. [Swann and Wallington, Fore street. November 13.

Wood Joseph, of Audenshaw, Lancaster, cotton spinner. [Kay and Renshaw, Manchester. November 20.

Welsh Henry, of Strood, Kent, carpenter. [Morson, Chatham; and Aubrey, Took's court, Chancery lane. November 24.

Woodroffe, Edmund, of Woolston, Gloucester, iron manufacturer. [Baron, Colford. November 27.

Wilkins Henry, of Bristol, tallow chandler. [Hartley, Bristol. November 27.

Wilmshurst George, Red Cross street, carpenter. [Palmer, Gray's Inn. December 1.

Wood Jesse, of Borcham street, Wartling, Sussex, shopkeeper. [Langridge and Keel, Lewes. December 1.

White Robert, of Cambridge, scrivener. [Cooper, Cambridge. December 8.

Wailoro John, of Haverfordwest, common brewer. [Blandford and Sweet, Inner Temple, and Stevens, Bristol. December 15.

Watters John, of Dubwath, Cumberland, common carrier. [Saul, Carlisle. January 15.

Wilson Henry, of Claines, Worcestershire, dealer. Cooper, Worcester. December 18.

Wilcox Daniel, of Liverpool, sail maker. [Wiatt and Co. Liverpool. December 18.

Witty Francis Adam, Great Earl street, Seven Dials, ironmonger. [Allingham, St. John square. December 22.

Westhorp Nathaniel, of Harwich, merchant. [Notcutt, Ipswich. December 25.

Whittle Richard, of Tarleton, Lancaster, shopkeeper. [Blakelock, Temple. January 22.

Wells John, of Cartwright street, Rosemary lane, victualler. [Lewis, Great St. Helen's, Bishopgate street. January 22.

Willacy John, William Willacy, and Thomas Willacy, of Liverpool, millers. [Marrow, Liverpool. January 26.

Yeardley, the younger, and Richard Jones, of Sheffield, linen drapers. [Tattershall, Sheffield; and Blakelock, Elm court, Temple. December 15.

Youard William, of North Walsham, Norfolk, currier. [Forster, North Walsham. December 29.

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## TO CORRESPONDENTS.

We have received a letter from *Petworth, Sussex*, to which we can only answer, that with some part of the recommendations of the writer it is impossible to comply. We are surprised, that he should advise us to select reports from other writers, which every one of our readers must know would subject us to innumerable accusations for pirating the works of others. We invite no invidious comparisons; but when he tells us that our *Reports*, which, are certainly *original*, correspond almost exactly with those of a long established reporter, and when we know that the greater part of them are printed much earlier, we cannot submit to think that many of our readers will deem them useless. To the advice of our correspondents we shall always pay a proper attention, and we shall probably gratify this gentleman in the other articles to which he alludes. Could we be convinced that any material charge in the plan of our work would be generally acceptable, we should doubtless yield to the general wish: but, at present, we think that we have selected those articles which are most useful in such a work. With respect to our accounts of books, we hope they are sufficiently ample. If they were longer, they would be unwieldy; that they are not more numerous is not to be attributed to us, but to the paucity of subjects which come under our cognizance.

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## BANKRUPTS,

*Declared in the London Gazette from April 2 to June 25.*

[The Solicitors' Names, and Dates of the Gazette, are preceded by a Crotchet.]

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Ainsworth George, of Warrington, Lancashire, and John Stephens, of Liverpool, wire drawers. [Rowlinson, Liverpool. April 16.

Archer Charles, of Birmingham, haberdasher. [Barker and Unett, Birmingham. April 20.

Alloo John, of Worcester, victualler. [Shepherd, Hyde street, Bloomsbury. May 4.

Ayers John Whitley, of Hadleigh, Suffolk, shopkeeper. [Bodfield, Lawrence lane. May 7.

Atkinson Edward, of Billinge, Lancashire, fustian manufacturer. [Baron and Co. Wigan. May 7.

Agar Thomas, Kingston upon Hull, hatter. [Birkitt, Bond court, Walbrook. June 1.

Anst Sarah, of Devises, Wiltshire, dealer and chapwoman. [Toulmin, Walbrook. June 1.

Arman John, of Darlington, Durham; money scrivener. [Atkinson, Castle street, Falcon square. June 8.

Bloye Dix and Charles Bloye, of Boston, Lincolnshire, linen drapers. [Thirkhill, Boston. April 2.

Bourne Charles, of Monmouth, victualler. [Reece, Ledbury, Herefordshire. April 6.

Bennett George, of Birmingham, linen and woollen draper. [Webb, Birmingham. April 6.

Bryon William, of St. Mary at Hill, brandy merchant. [Palmer and Co. Wainford court, Throgmorton street. April 9.

Brettel Elisabeth, of Birmingham, hosier. [Whately, Birmingham. April 9.

Birkley Henry, of Monkwearmouth Shore, Durham, blacksmith. [Kidson, Monkwearmouth Shore. April 9.

Bantham Bryan, of Sheerness, banker. [Nelson, Falsgrave place, Temple bar; or Mr. Jefferys, Chatham. April 13.

Baikle James, of Chatham, banker. [Jefferys, Chatham. April 13.

Boore Lancelot, of Wardour street, tailor. [Dodd and West, Threadneedle street. April 13.

Buckton William, of Kingston upon Hull, spirit merchant. [Prickett or Frost, Hull. April 20.

Bunn Benjamin, of London Wall, London, pawnbroker. [Wadson, Barlows; and Grosvenor, Austin Friars. April 25.

Bew John, of Southwark, cheesemonger. [Sherwin, Great James street, Bedford row. May 4.

Barnes Richard, of Durham, mercer. [Ward, Durham. May 7.

## *Bankrupts.*

- Brown Richard, of St. Philip and Jacob, Gloucestershire, corn factor. [Leman, Bristol. May 7.
- Beeaton Anne, and Beeaton Sarah, Gerrard street, Soho, haberdashers. [Batchellor Clement's Inn. May 18.
- Butt William, New street, Covent Garden, hatter. [Birkett, Bond court. May 18.
- Blade John, of Bath, linen draper. [Clarke, Bath. June 1.
- Blackburne John, of Liverpool, corn and flour merchant. [Rowlinson, Liverpool. June 4.
- Beaerick Joel, of Stockport, Chester, grocer. [Baddeley, Stockport. June 4.
- Burg William, of Bucklersbury, warehouseman. [Willis, Warnford court, Throgmorton street. June 4.
- Burghelm Baruch Jacob, of Fenchurch street, merchant. [Carpenter, Basinghall street. June 4.
- Bury William, of Bucklersbury, London, warehouseman. [Willis, Warnford court, Throgmorton street. June 8.
- Brewer John, of Essex street, Strand, tailor. [Evitt and Rixon, Haydon square, Minories. June 15.
- Beswick Thomas and Gedtge Redfern, of Quarnford, Staffordshire, dealers. [Clulow, Stone, Macclesfield. June 15.
- Bulmer R. of Norfolk street, painter. [Platt, Bride court, Bridge street. June 22.
- Corbett Samuel, of St. Catherine's Middlesex, painter and glazier. [Robinson, Bermondsey. April 6.
- Clifton William, of Ryder's court, Cranbourn street, victualler. [Kibblewhite and Co. Gray's Inn place. April 16.
- Chambers, Thomas, of Downham Market, Norfolk, victualler. [Marshal, Ely. April 16.
- Cole Thomas, of Chard, Somersetshire, currier. [Clarke, Chard. April 20.
- Collins James, Gough square, engraver. [Oakley, New London street. April 25.
- Cassano Alexander, of Pall Mall, auctioneer. [Taunton, Essex street, Strand. April 30.
- Cowdery John Starr, of Whitechapel road, Middlesex, mealman. [Dyne, Serjeant's Inn, Fleet street. May 4.
- Clingman Jacob, and Thomas Gell, of Kingston-upon-Hull, merchants. [Frost, Hull. May 11.
- Clarke Thomas, of Lambourn, Essex, cowkeeper. [Baddeley, Leman street. May 14.
- Charlton Thomas, of Eccles, Lancashire, inn keeper. [Foulkes and Higson, Manchester. May 18.
- Clarke John, and Wake William, of Clapham Common, Surrey, corn dealers. [Salkeld, Hatton garden. May 18.
- Cook William, late of Milbrook, Hants, wine merchant. [Williams and Sherwood, Austin Friars. May 25.
- Crossly John, of Smallbridge, Lancashire, cotton spinner. [Knight, Manchester. June 1.
- Chapman George, of Liverpool, draper. [Williams, Liverpool. June 8.
- Crump Richard, of Great Marylabonne, Middlesex, perfumer. [Taylor, Motimer street, Cavendish square. June 25.
- Dann William, of Gillingham, Kent, banker. [Nelson, Palegrave place, Temple bar; or Mr. Jefferys, Chatham. April 13.
- Derbyshire Joseph, jun. of Matlock, Derbyshire, slater, [Canwell, King's Newton, Derbyshire. April 30.

## *Bankrupts.*

- Dann Wm. Timewell Bentham, Bryan Bentham, and James Baikie, of Chatham, Bankers. [Jefferys, Chatham. May 7.
- Deighton Thomas, Manchester, calico printer. [Barrett, Manchester. May 21.
- De Perrin Charles Francis Oliver, Duke street, Manchester square, Middlesex, victualler. [Rogers, Frith street, Soho. May 25.
- Dixon Robert, of Toll square, North Shields, Northumberland, ship owner. [Ramshaw, North Shields. June 8.
- Davis George, Boston, of Lincoln, glass and chinaware seller. [Dent and Astbury, Hanley, Staffordshire. June 8.
- Dutchman J. sen. of Kingston upon Hull, sail maker. [Hugall, Hull. June 11.
- Devonshire David, of Old street, London, jeweller. [Atkinson, Castle street, Falcon square. June 15.
- Evill Wm. of Bath, upholder. [Mane, Bath. April 6.
- Elias Nicholas, of Judd Place East, merchant. [Palmer and Tomlinson, Warnford court, Throgmorton street. April 20.
- Evans Evan, Salisbury street, Strand, coal merchant. [Price and Co. Old Buildings, Lincoln's Inn. May 21.
- Edge Thomas, Lower Thames street, London, victualler. [Wrangham, Seething lane, Tower street. May 25.
- Easterby George, late of St. Thomas's street, Borough, victualler. [Broad, Union street, Southwark. May 25.
- Ellis Thomas, of Ollerton, Nottingham, mercer. [Walkden, Mansfield. June 4.
- Everitt Richard, of Great Yarmouth, Norfolk, grocer. [Worship, Great Yarmouth. June 25.
- Farnell Martin, late of Ashby-de-la-Zouch, Leicester, banker. [Smith, Ashby-de-la-Zouch. April 2.
- Forbes John, of Birmingham, nursery and seedsman. [Spurrier, Birmingham. April 6.
- Froggatt Thomas, of Matlock, Bath, Derbyshire. [Brittlebank, Winstar, Derbyshire. April 9.
- Ford Edward Paul, of Howland Mews West, hackneyman. [Vincent and Upstone, Bedford street. April 13.
- Farley Thomas Russell, of Steyning, Sussex, linen draper. [Sudlow and Co. Monument yard. April 30.
- Ferne Robert B. of Litchfield, wine merchant. [Simpson, Litchfield. May 11.
- Furlong Michael, Guildford street, Russel square, Middlesex, merchant. [Hulme, Brunswick square. May 18.
- Payne William, Great Carter lane, Doctor's Commons, druggist. [Nethersole and Portal, Essex street, Strand. May 18.
- Fernyhough J. of Uttoxeter, Staffordshire, innkeeper. [Hewitt, Manchester. June 22.
- Gurden William, jun. of Stoney Stratford, Buckinghamshire, lace merchant. [Newport, Pagnell. April 9.
- Gorrod John, of Orford, Suffolk, mariner. [Cooper and Lowe, Southampton buildings, Chancery lane. May 4.
- Goodbody John, of Abingdon, Berks, breeches maker. [Pratt, Abingdon. May 4.
- Garnson James, of Kingsland road, flax dresser. [Eddis, Clement's lane, Lombard street. May 7.

## *Bankrupts.*

- Goold Amos, of Birmingham, grocer. [Smith and Arnold, Birmingham, May 11.
- Gipote Gerrard Wm. of Dean street, Soho, chymist and druggist [Batchelor, Clement's Inn. May 18.
- Glover Charles, of Albemarle street, Middlesex, upholsterer. [Foulkes, Southampton street, Covent Garden. May 18.
- Greenwell John, South Shields, Durham, tallow chandler. [Dixon, Wolsingham. May 21.
- Grey Absalom, of Fleet street, London, man's mercer. [Parnell, Church street, Spitalfields. May 25.
- Geere Thomas and Joseph Carless, of Loose, Kent, millers. [Burr and Pope, Maidstone. June 1.
- Gibson Mary, of Bermondsey street, Southwark, shopkeeper. [Broad, Union street, Southwark. June 8.
- Giles Horn, of Canterbury, grazier. [Nethersole and Portal, Essex street, Strand. June 15.
- Ginger John, of Piccadilly, bookseller. [Evans, Thavies Inn, Holborn. June 25.
- Goulden Robert, of Liverpool, merchant. [Forrest, Liverpool. June 25.
- Hart Stephen, of Chatham, baker. [Nelson, Palsgrave place, Temple bar, London. April 2.
- Hopkins Thomas, of West Green, Middlesex, varnish maker. [Dore, Berkeley street, Clerkenwell. April 6.
- Howland Thomas, of Thame, Oxford, carrier. [Rose and Munnings, Gray's Inn square. April 6.
- Harwood Abraham, of Malden, Essex, ironmonger. [Sherwood and Parrell, Canterbury square, Southwark. April 13.
- Hibbert William, of Hollinwood, Lancashire, victualler. [Barlow, Oldham. April 16.
- Hobson Matthew and Robert Story, of Bishop Wearmouth, Durham, drapers. [Parker, Bishop Wearmouth. April 16.
- Hurry Francis, and Hurry Thomas, Howden dock, Wall's end, Northumberland, ship builders. [Clayton and Brumel, Newcastle upon Tyne. April 25.
- Hitchcock Henry, Avebury, Wiltshire, malster. [Griffiths and Welford, Marlborough. April 25.
- Hodgkiss Thomas, of Tabernacle Walk, grocer. [Allan, Fenchurch-street, April 30.
- Hird Thomas, of South street, Berkley square. [Dawson, Warwick street, Golden square. May 4.
- Henzell George, otherwise George Lawson Henzell, of Shacklewell, brandy merchant. [Holland, Lambeth road. May 7.
- Holborn, J. of Little East Cheap, wine and brandy merchant. [Forster, Lincoln's Inn New square. May 28.
- Hibbard J. of Bath, Alehouse keeper. [Morgan, Gray's Inn square. May 28.
- Holmes William, of Studley, Warwick, baker and mealman. [Parmer, Birmingham. June 1.
- Hall Samuel, of Sheffield, hat manufacturer. [Rimington and Wake, Sheffield. June 1.
- Hem r William, of Poulton, Lancaster, money scrivener. [Hull, Poulton. June 4.
- Harrison Richard, of Hulton lane ends, Lancashire, innkeeper. [Kearsley and C. Manchester. June 12.
- Waywar Henry, of Ramsgate, Kent, butcher. [Swinford, Mitre court buildings, T. M. P. C. June 15.

## *Bankrupts.*

Master Thomas, of New Cross, Deptford, carpenter. [Dawne, Henrietta street, Covent garden. June 15.

Hill Robert, of Passant row, Pentonville, factor. [Pullin, Fore street, London. June 28.

Hammond Edward, of Tottenham court road, painter and glazier. [Marson, Church row, Newington Butts. June 25.

Harvey Alice, of Wigan, Lancashire, milliner. [Gaskell, Wigan. June 25.

Holmes James, of Botchergate, Carlisle, common carrier. [Saul, Carlisle. June 22.

Haward Henry, of Ramsgate, Kent, butcher. [Swinford, Temple. June 25.

Ingle John, of Ashby-de-la-Zouch, Leicestershire, mercer. [Pestell and Co. Ashby-de-la-Zouch. May 14.

Inman Joseph, of Houndsditch, cheesemonger. [Russell, Lant street, Southwark. June 1.

Jones John, of Eglwysilan, Glamorganshire, maltster. [Williams, Cardiff. April 20.

Jones John, of Liverpool, victualler. [Blackstock, Liverpool. May 4.

Juda Joseph, of Bishopegate-street Without, slopseller. [Howard, Jewry street, Aldgate. May 7.

Jackson John Thurmond, of the Washway, Lambeth, Surrey, stockbroker. [Dennetts and Greaves, King's arms yard, Coleman street. May 18.

Jackson Anne, Bishopwearmouth, Durham, ship owner. [Shafro, Bishopwearmouth. May 21.

Jenner Henry, of Norwich, linen draper. [Harmer, Norwich. June 4.

Johnson Chris, of Great Stambridge, Essex, merchant. [Francis, Colchester. June 11.

Jenkins J. of Great Warner street, Cold bath square, linen draper. [Richardson, New Inn. June 22.

King William, Birmingham, factor. [Burrish, Birmingham. April 25.

Kempthal Thomas, of Higler's lane, Blackfriar's road, grocer. [Williams, Clifford's Inn. April 30.

Kenworthy John, of Bollington, Cheshire, cotton spinner. [Taylor, Manchester. May 7.

Locke Charles, of Reading, horse dealer. [Newbery, Reading. April 2.

Lee John, of York, woollen draper. [Munby, York. May 4.

Luffman Wm. of Ealing, butcher. [Power, Clifford's Inn. May 4.

Lambert Thomas, of Jervaux, Yorkshire, horse dealer. [Coates, Rippon. May 11.

Lewis Benjamin, of Halstead, Essex, money scrivener. [Sparling, Colchester. May 11.

Lewis Wm. of Dowlais, Glamorganshire, shopkeeper. [Morgan, Bristol. May 14.

Lee Edward, of Drayton in Hales, Salop, skinner. [Willim, Bilston, Staffordshire. June 1.

Lewis John, of Cardigan, mercer. [Crosland, Huddersfield. June 15.

Moorhouse John, of John street, Adelphi, wine merchant. [Clayton and Co. Lincoln's Inn, New square. April 9.

Milner John, of Nottingham, hosier. [Cutts and Sanders, Nottingham. May 4.

## *Bankrupts.*

- Massey Joseph**, of Macclesfield, check manufacturer. [Walker, Stockport, May 7.
- Mayno George**, the younger, of Colchester, Essex, horse dealer. May 11.
- Macphie Angus**, of Ilford, Essex, merchant. [Russell, Crown court, Aldersgate street. May 14.
- M'Ewon Andrew**, of Liverpool, broker. [Ascroft, Liverpool. May 14.
- Marshall Thomas**, Kingston upon Hull, grocer. [Sandwich, Hull. May 21.
- Mercer William**, of Mile end, Stepney, Middlesex, horse dealer. [Mitchell, Union court, Broad street. May 25.
- M'Namara Richard**, of Rodney street, Middlesex, merchant. [Forbes, Ely place, Holborn. June 1.
- Margrave Thomas**, the younger, of Gower's walk, St. Mary, Whitechapel, merchant.
- Marston Edward**, of Uttoxeter, Staffordshire, cork cutter. [Osborn, Burton upon Trent. June 15.
- Mendes Benjamin Da Costa**, of Bury street, St. Mary Axe, dealer and chapman. [Willett and Annesley, Finsbury square. June 15.
- Matthews Richard** and **Thomas Jones**, of Aberystwith, Cardigan, merchants. [Lloyd, Carmarthen. June 15.
- Newbury Thomas**, Great Coram street, builder. [Patten, Cross street, Hatton Garden. April 25.
- Nicholls John George**, of Moulsey, Surrey, merchant. [Dennetts and Co. King's Arms yard, Coleman street. May 14.
- Neville Christopher**, Dartford, Kent, coach maker. [Hughes, Cross court, Drury lane. May 18.
- Newton Samuel, jun.** Ashton-under-Line, Lancashire, cotton spinner, [Edge, Manchester. May 21.
- Pearson John**, of New Inn, Wych street, money scrivener. [Yeates, Hampton street, Walworth. April 13.
- Pain George**, of Brompton, Kent, butcher. [Blandford and Co. King's Bench Walks, Temple. April 30.
- Phipps Josiah**, of Copthall court, Throgmorton street, broker. [Gregson and Dixon, Angel court, Throgmorton street. May 11.
- Pow John**, Worcester, builder and carpenter. [Welles, Worcester. May 18.
- Paton Robert**, of Hatton wall, Middlesex, baker. [Jessop, Clifford's Inn, June 25.
- Redpath James**, Deptford bridge, Kent, upholster. [Maddox and Stevenson, Lincoln's Inn, New square. April 25.
- Rhodes Joseph**, and **John Justamond**, of Manchester, cotton manufacturers. [Taylor, Manchester. April 30.
- Reason Isaac**, of Manning-tree, Essex, baker. [Serjeant, Colchester. May 7.
- Redmond John**, of Adam street, Manchester square, tailor. [Dawson, Warwick street, Golden square. May 18.
- Redford George**, Bedford, Lancashire, cotton spinner. [Knight, Manchester. May 18.
- Rowley, T. and J.** of Salford, Lancashire, cotton spinners. [Halstead and Co. Manchester. May 28.
- Rowland Edward**, of Liverpool, corn merchant. [Stanistreet and Eden, Leigh street, Liverpool. June 1.
- Reilly Michael**, of Great York mews, York place, Portman square, Middlesex, victualler. [Holloway, Chancery lane. June 8.
- Roe Charles**, late of Peter street, Clerkenwell, Middlesex, tin plate worker. [O'Connell, Staple's Inn. June 25.



## *Bankrupts.*

- Senders Samuel, of Love lane, wine merchant. [Noy, Mincing lane. April 20.  
 Spencer Joseph, of Deptford, rope-maker. [Robins and Co. Bartlett's build-  
 ings, Holborn. April 30.  
 Sutherland James, of Little Tower hill, brandy merchant. [Gauy and Co.  
 Angel court, Throgmorton street. April 30.  
 Stephens James, of James street, St. Martin's in the Fields, corn dealer. [Buck,  
 Berkley street, Portman square. May 14.  
 Stewart Wm. of Liverpool, liquor merchant. [Ascroft, Liverpool. May 14.  
 Sharpe Joshua, Stockton, Durham, linen draper. [Joseph Frank, Stockton,  
 May 18.  
 Smith, A. of Kingston upon Hull, baker. [Galland, Kingston upon Hull.  
 May 28.  
 Searle William, of Chudleigh, Devon, shopkeeper. [Sanford, Exeter. June 8.  
 Swann James, of Hinckley, Leicestershire, carrier. [Thornley, Hinckley.  
 June 12.  
 Samuel Cartwright, of Maiden lane, Wood street, hosiery. [Wild, Castle street,  
 Falcon square. June 15.  
 Shepherd George, of Stanhope street, Clare market, wine and brandy mer-  
 chant. [Elstob, Catherine court, Trinity square. June 15.  
 Sutherland Robert, of Newman street, merchant. [Ross and Hall, New Bos-  
 well court, Carey street. June 25.  
  
 Tennant John, of Lower Brook street, Hanover square. [Williamson, Clifford's  
 Inn. April 2.  
 Thomas Mathew, Kingsland Crescent, Middlesex, draper. [Flashman, Ely  
 place, Holborn. May 18.  
 Taylor James, of Lamb's Conduit street, Middlesex, apothecary. [Few,  
 North street, Red Lion square. May 25.  
 Thompson Francis, late of New North street, Red Lion square, Middlesex,  
 merchant. [Murphy, Bouverie street, Fleet street. May 25.  
 Turley James, John Turley, and Arnel Turley, of Coseley, Staffordshire, iron-  
 masters. [Marklew, Walsall. June 8.  
  
 Wills George, of High street, Whitechapel, Middlesex, tailor. [Harman,  
 Wine office court, Fleet street. April 6.  
 Wade Searles, of Albion place, Blackfriars, brewer. [Swain and Co. Old Jewry.  
 April 9.  
 Wilhelm Herman, of Martin's lane, Cannon street, merchant. [Palmer and  
 Tomlinson, Warrford court. April 13.  
 Wild William, of Nottingham, milliner. [Piercy, Nottingham. April 16.  
 Watson Adam, of Stockport, Chetler, alehouse keeper. [Edge, Manchester.  
 April 20.  
 White George, of Whitechapel road, grocer. [Smith and Henderson, Great  
 Prescott street, Goodman's fields. April 20.  
 Wolf Moses, and Moses Lewis, Fishmonger Alley, Southwark, salcemen,  
 [Isaacs, Great George street, Minorities. April 25.  
 Whitaker John, of Manchester, and Townsend Usher, of Bristol, dealers,  
 [Edge, Manchester. May 4.  
 Whitaker John, of Salford, Lancashire, cotton twist dealer. [Partington, Man-  
 chester. May 4.  
 Wilcox Christopher, of Chewton Mendip, Somersetshire, victualler. [Cif-  
 ford, Bristol. May 4.  
 Webb Wm. of Westminster bridge road, coal-merchant. [Beetham, Bouverie  
 street, Fleet street. May 7.

## *Bankrupts.*

- Waddington Samuel Ferrand, of Southwark, banker. [Murphy, Bowditch street, Fleet street. May 14.
- Wrigley Miles and John Wrigley, of Saddleworth, Yorkshire, merchants. [Gibson, Ashton-under-Lyne, Lancashire. May 11.
- Watson John, of Liverpool, merchant. [Field, Friday street, Cheapside. May 11.
- Wilson Clementina, of Manchester, woollen draper. [Taylor, Manchester. May 18.
- Walker David, Holborn, bookseller. [Aubrey, Took's court, Cornhill street. May 18.
- Williams John, of Bedminster, Somersetshire, miller. [Leman, Bristol. May 25.
- Windor William and Josiah Wheeler, of Liverpool, merchants. [Kirkpatrick and Pritt, Liverpool. June 1.
- Wheeler Josiah and Isaac Thomas Wheeler, of Liverpool, merchants. [Kirkpatrick and Pritt, Liverpool. June 1.
- Wallens John the younger, of Lye, Worcestershire, victualler. [Hallen, Kidderminster. June 1.
- Wood Moses, of Dean street, St. Anne's, Westminster, tailor. [Wittig, Duke street, Portland place. June 8.
- Waigwright Edward, of Thame, Oxfordshire, butcher. [James and Rose, Aylesbury. June 8.
- Way Edward of Henrietta street, Cavendish square, wine merchant. [Parry, Great Mary la bonne street. June 15.
- Young Francis, of Neath, Glamorganshire, innkeeper. [James, Swansea. May 7.
- Yates Samuel, of Wood street, London, merchant. [Palmer and Tomlinson, Warrford court, Throgmorton street. May 4.
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# BANKRUPTS,

*Declared in the London Gazette, from July 4 to  
October 26, 1805.*

[The Solicitors' Names and Dates of the Gazette, are preceded  
by a Crotchet.]



Albert De Mierre J. D. and Jas. Crosbie of Broad street Chambers, merchants. [Berry, Walbrook. July 16.

Ayerst J. of Wiltshire, Kent, corn merchant. [Waterman, Tenterden. July 16.

Abney Robert, of Asliby de la Zouch, Leicester, brick maker. [Smith, Ashby de la Zouch. August 17.

Angell Henry Hanson, of New Bond street, haberdasher. [Berry, Walbrook. August 24.

Aberdein Alexander, of Lisle street, Leicester fields, merchant. [Ross and Hall, New Boswell court, Carey street. August 24.

Arnold Thomas, of Canterbury, grocer. [Bugg, Addie street, Aldermanbury. September 7.

Bennett James and Thomas, of Huntingdon, drapers. [Cooper and Co. Southampton buildings, Chancery lane. July 2.

Bourdman, Benjamin, of Ipswich, Suffolk, shopkeeper. [Nind, Great Prescot street, Goodman's fields.

Bennett James, of Tregony, Cornwall, linen draper. [Sanford, Exeter. July 6.

Bond Thomas, of New Sarum, Wilts, clothier. [Goodwin, New Sarum. July 6.

Brown William, of Holesott, Northampton, wool comber. [Goodhall, Wellingborough. July 13.

Barnley John, Saffron Hill, cordwainer. [Higden and Sym, Currier's Hall, London Wall. July 13.

Brooks Mark, of Shepperton, corn and coal merchant. [Clark and Grazebrook, Chertsey, Surrey. July 13.

Benson W. of Twickenham, maltster. [Blake and Co. Essex street, Strand. July 16.

Bexon William, of Gosport, hawker. [Fisher, jun. Furnival's Inn. July 20.

Boyd Thomas, of Buckingham street, Strand, wine and brandy merchant. [Dawson, Warwick street, Golden square. July 20.

Bret William, of Rotherhithe, Surrey, plumber. [Dove and Mayhew, Elm court, Temple. July 20.

Badderley J. of Wolverhampton, Staffordshire, druggist. [Biddle, Wolverhampton. July 30.

Blunt J. and Robt. Scollay, of the Coal Exchange, coalfactors. [Allan, London street, Fenchurch street. August 6.

Beck A. of Oxford street, sadler. [Beckett, Clement's Inn. August 6.

Bennell John, of Gouldstone square, Whitechapel, builder. [Strutton, Shore-ditch. August 17.

## *Bankrupts.*

- Barrow Edward Nat. of Leadenhall street, baker. [Taylor, Old street road. August 20.
- Bunn Samuel, of Great Charlotte street, Blackfriar's road, merchant. [French and Williams, Castle street. August 27.
- Brown John, of Winttringham, Lincolnshire, baker. [Marris and Brown, Barton upon Humber. September 7.
- Brewer William, of Bathpool Mills, Somerset, miller. [Beadon, Taunton. September 7.
- Bury Richard, of Manchester, dry salter. [Kearseley and Cardwell, Manchester. September 7.
- Blenkinson John, of Newcastle upon Tyne, tobacconist. [Blow, Carlisle. September 17.
- Brenan Robert, of Brown's buildings, Saint Mary Axe, corn dealers. [Rogers, Manchester buildings, Westminster. September 21.
- Bellamy J. and E. Bellamy, of Brigstock, Northamptonshire, butchers. [Hill-yard, Clement's Inn. September 24.
- Bainbridge John, of Walsington, Durham, draper. [Bell and Brodrick, Bow lane, Cheapside. September 28.
- Blakeston John, of Kingston-upon-Hull. [Conyers, Driffeld, Yorkshire. October 5.
- Badcock J. of Paternoster Row, bookseller. [Dugby, Middle Temple lane. October 8.
- Boon Robert, of Chedsoy, Somerset, jobber of cattle. [Boys, Eridgewater. October 12.
- Burton Benjamin, of Houndsditch, slopseller. [Adams, Old Jewry. October 19.
- Bailey Robert, of Hemden street, Somers Town, builder. [Flexney, Chancery lane. October 22.
- Brawn T. of Pecus, Staffordshire, miller. [Bucknall, Albrighton, Wolverhampton. October 22.
- Blunt William, of Hartwell, Northampton, farmer. [Kirby, Towcester. October 26.
- Collard John, jun. of Canterbury, hop-dealer. [Wright and Co. Temple. July 2.
- Chandler, Richard P. of Gloucester, tobacconist. [Tarrant and Co. Chancery lane. July 2.
- Cox Benjamin, of Stourbridge, Worcestershire, timber merchant. [Fellows, Dudley. July 6.
- Carter John, of Grimstone, Norfolk grocer. [Goodwin, King's Lynn. July 9.
- Crane John, of Whaplode, Lincoln, draper. [Cheales, Sleaford. July 9.
- Canning John, of Birmingham, plater. [Maudsley, Birmingham. July 9.
- Curzon C. of Portsea, Hants, shopkeeper. [Nind, Great Prescott street, Goodman's fields. July 16.
- Canning Edward, the younger, of Henley in Arden, Warwickshire, thread manufacturer. [Lea, Henley in Arden. July 27.
- Copp John and Robert Walker, of Stratford, Essex, calico printers. [Roach, Nicholas lane, Lombard street. August 3.
- Clarke James, of Salisbury, haberdasher. [Brumell, Aldermanbury. September 17.
- Cline William, of Islington Green, corn dealer. [Wright and Bovill, Chancery lane. October 19.
- Collwill J. of Newnham, Gloucestershire, wine merchant. [Tanner, Bristol. October 22.
- Dugard George, of Upper Grosvenor place, victualler. [Crossfield and Moore, Salisbury street. July 27.
- Dawson James, of Copthall Buildings, warehousemen. [Pollard, King's Bench walks, Temple. August 10.

## *Bankrupts.*

- Dimond James Ford, of Great Russell street, Bloomsbury, hair dresser. [Dove and Mahew, Elm court, Temple. August 17.  
 Dodgson George, of Kendal, Westmoreland, grocer. [Rigby, New City Chambers. August 24.  
 Duffy P. of Newman street, Oxford street, wine merchant. [Passmore, Broad street Chambers, Old Broad street. September 8.  
 Driver Joseph, of Kighley, Yorkshire, cotton spinner. [Delafore, Kighley. September 14.  
 Doyle J. of St. Paul's, Covent Garden, china and glassman. [Nayler, Great Newport street. October 8.  
 Davis Rich. of Aldermanbury, warehouseman. [Milac and Co. Old Jewry. October 15.  
 Edwards Thomas, of Wribbenhall, Kidderminster, shop keeper. [Clarke and Pardoe, Bewdley. July 9.  
 Edgar John, of New Sarum, Wiltshire, surgeon. [Bodding, jun. Salisbury. August 24.  
 Etches Richard, of Leek, Stafford, wine and liquor merchant. [Mills, Cruso, and Jones, Leek. August 21.  
 Eardley Charles and Thomas Eardly, of Stockport, Cheshire, cotton spinners. [Edge, Manchester. September 21.  
 Evans D. of Southampton court, Southampton row, linen draper. [Sheppard, Bartlett's buildings. October 15.  
 Fletcher George, of Worksopp, Nottinghamshire, dealer. [Berry, Wallbrook. August 3.  
 Freeman Thomas, of St. Martin's le Grand, wine merchant. [Barrow, Threadneedle street. August 10.  
 Feltham Samuel, of New Sarum, Wilts, tailor. [Godwin, New Sarum. August 13.  
 Fernely Thomas and George Fernely, of Holme, Manchester, cotton spinners. [Halsted and Ainsworth, Manchester. September 7.  
 Farrar T. of Halifax, Yorkshire, cotton spinner. [Wilcox, Halifax. September 10.  
 Feldwicks James, of Brightelmstone, Sussex, cordwainer. [Hill, Brightelmstone. September 21.  
 Favell Michael, of High street, Borough, linen draper. [Nayler, Great Newport street. October 12.  
 Fell Thomas, of Wardour street, St. James's, coachmaker. [Allan, London street, Fenchurch street. October 22.  
 Garbett James, of Liverpool, builder. [Knightly, Liverpool. July 2.  
 Gardner William, of Luton, Bedfordshire, sack manufacturer. [Jackson, Fenchurch buildings, Fenchurch street. July 6.  
 Goostrey Peter, of Rushton Staffordshire, cotton spinner. [Wadsworth, Macclesfield. July 23.  
 Graham John Kelley, of Fowey, Cornwall, merchant. [Brown, Fowey. August 3.  
 Geary Henry, of Warrington, Lancashire, linen and woollen draper. [Johnson and Bailey, Manchester. August 27.  
 Green Thomas, of Wilknam, Yorkshire, dealer. [Sandwich, Hull. September 21.  
 Gibbs James, of Peterborough, Northamptonshire, draper. [Atkinson, Castle street, Falcon square. September 24.  
 Gabagan Joseph, of Broad Chambers, London, merchant. [Day, Martin's lane, Cannon street. October 1.  
 Golden John, of Bury St. Edmunds, draper. [Dickson and Borton, Bury St. Edmunds. October 19.

## *Bankrupts.*

- Griffiths Frederic, of Threadneedle street, apothecary. [Gregson and Dixon, Angel court, Throgmorton street. October 19.
- Greatrex C. of Sutton Coldfield, Warwickshire, broker. [Clare and Co. Gray's Inn square. October 22.
- Hole, B. of Painswick, Gloucestershire, clothier. [Tovey, Newnham. July 2.
- Humphris Henry Jenner and William Humphris, of Fleet Street, London, druggists. [Smith and Tilson, Chapter Coffee house, St. Paul's Church yard, July 6.
- Hobdell Richard, of Chandos street, liquor merchant. [Taylor, Beaufort Buildings, Strand. July 6.
- Hancock Henry, and Hoffmeyer John Bernard, of Newcastle upon Tyne, merchants. [Clayton and Brumell, Newcastle. July 13.
- Hewitt John, of Birmingham, druggist. [Mole, Birmingham. July 13.
- Houseal John Bernard, of Streatham, Surrey, apothecary. [Martelli, Norfolk street, Strand. July 13.
- Harrison John, and Rigg Robert, of Manchester, manufacturers. [Foulkes and Higson, Manchester. July 13.
- Harrison Geo. of Globe street, Wapping, carpenter. [Wild, Castle street, Falcon square. July 16.
- Hill J. of Towcester, Northamptonshire, grocer. [Kirby, Towcester. July 23.
- Hall Thomas, of Frome Selwood, Somersetshire, clothier. [Rotten, Frome. July 23.
- Hitchcock J. of Oxford street, picture dealer. [Kibblewhite and Co. Gray's Inn place. July 30.
- Heywood W. of Marsden, Yorkshire, cotton spinner. [Alexander, Halifax. July 30.
- Hennem John, of Lime Kilns, East Greenwich, Kent, coal and corn dealer. [Flexney, Chancery lane. August 3.
- Hindle Thomas, of Pancras place, bricklayer. [Taylor, Took's court, Cursitor street, Chancery lane. August 3.
- Hinsworth William, of Walton, Yorkshire, corn dealer. [Scholefield, Horbury. August 3.
- Herbert Thomas, of Dowgate hill, merchant. [Jackson, Walbrook. August 3.
- Hubbersty John Lodge, of Lincoln's Inn, barrister at law. [Cooper and Lowe, Southampton buildings, Chancery lane. August 10.
- Hughes W. of Cross street, Long Acre, money scrivener. [Burden, St. Andrew's court, Holborn. August 13.
- Hughes Mark, of Bury court, Love lane, wool merchant. [Pullen, Fore street. August 24.
- Huddleston James, of Leicester, victualler. [Thornley, Hinckley. August 27.
- Meadland William, of Stansted, Mounthynet, Essex, farmer. [Capreol, Bishop's Stortford, Herts. August 31.
- Hall William, of Silver street, Wood street, Manchester warehouseman. [Atkinson, Castle street, Falcon square. August 31.
- Hutchings Henry, of Blackfriars' road, tailow chandler. [Charter, Printer's street, Blackliars. August 31.
- Hayes George, of John street, Middlessex, merchant. [Highmore, Queen street, Cheapside. September 14.
- Harding Solomon, of Red cross street, Cripplegate, baker. [Dyne, Serjant's Inn, Fleet street. September 14.
- Meyes John, of Charlton row, Lancaster, dyer. [Duckworth and Chippen-dall, Manchester. September 17.
- Hodgson William, of the Strand, stationer. [Street, Philpot lane. September 17.

## *Bankrupts.*

Hamer Richard, of Saville row, wine merchant. [Atkinson, Castle street, Falcon square. September 28.

Hoffman Daniel, of Belton street, Long acre, cheesemonger. [Hodgson, Charles street, St. James's square. October 12.

Hessewood Robert, jun. of Scarborough, ship owner. [Robson, Scarborough. October 15.

Isaac John, of Liverpool, merchant. [Orred, Liverpool. August 27.

Isaacs Geo. and Mich. Isaacs, of Bevis Marks, merchants. [Scott, St. Mildred's court, Poultry. October 22.

Johnson W. of Edgeware row, collar maker. [Imper and Co. Inner Temple lane. July 30.

Jackson William, of Manchester, hat lining cutter. [Duckworth and Chippendall, Manchester. August 3.

Johnson Coulston, of Knightsbridge, stablekeeper. [Minshull and Co. Milbank street. August 17.

Jones Robert Scatchard, of Mark lane, corn dealer. [Adams, Old Jewry. August 17.

Johnson Thomas, of Fleet market, cabinet maker. [Fitzgerald, Lemon street, Goodman's Fields. August 31.

Jefferson A. W. of Rathbone place, china and glass man. [Tucker, Staple's Inn. September 3.

Jones John, of Hereford, plumber and glazier. [Hill, Worcester. September 21.

Jones J. of Carnarvon, draper. [Williams, Carnarvon. September 24.

Johnson John, of Holborn hill, linen draper. [French and Williams, Castle street, Holborn. October 12.

Jenkins T. and T. F. Wollen, of High street, Borough, and Chichester, Sussex, linen drapers. [Few, New North street, Red Lion square. October 15.

Jenkins Walter, of Bristol, broker. [Mellin, Bristol. October 15.

Lincoln Richard, of Yoxford, Suffolk, brandy merchant. [Flashman, Ely place, Holborn. July 20.

Lowden William, of Ridinghouse lane, Portland street, farrier. [Edmunds and Hammond, Hatton garden. July 20.

Ludlam Joseph, of Stoke Bruern, Northampton victualler. [Walford and Golby, Banbury. July 27.

Lovelock Charles, of Durham street, Strand, dealer in wine. [Williams and Sherwood, Austin Friars. August 3.

Larkins Edmund, of Sheffield, Bedfordshire, shopkeeper. [Chapman, Biggleswade. August 6.

Lenkin John, of Worcester street, Southwark, millright. [Smith, Robert street, Adelphi. August 17.

Lambert George, of Holborn, victualler. [Ellis, James street, Buckingham gate. August 24.

Leo Christopher, of Angel court, Throgmorton street, merchant. [Montefiore, Finch lane, Cornhill. September 28.

Lord Francis, of Skinner street, Somers's Town, Middlesex, tallow chandler and oilman. [Mills and Robinson, Parliament street, Westminster. October 5.

Markam John, jun. of Napton upon the Hill, Warwick, shopkeeper. [Tomes, Southam, Warwickshire. July 9.

Milburn William, and Copeman John Mills, of Bow Church yard, warehousemen. [Courteen, Cannon street. July 13.

## *Bankrupts.*

- Mence Richard Mogg, of Worcester, money-scrivener. [Fritz, Worcester. July 23.
- M'Cann William, of Blackwall, victualler. [Rutherford, Bartholemew Close. August 10.
- Moule John, of Birmingham, factor. [Elkington, Birmingham. August 10.
- Moggridge Anna, of Cranbourn street, Leicester square, milliner. [Wells, Wood street, Spitalfields. August 17.
- Mercer H. and J. Forshaw, of Liverpool, merchants. [Leigh, Liverpool. September 10.
- Moore James, of Walworth, merchant. [Williams, Cursitor street, Chancery lane. September 14.
- Main Jos. of Northampton, ironmonger. [Hewes, Northampton. October 8.
- Macklin Anthony, of Compton street, Soho, linen draper. [Bousfield, Bowverie street, Fleet street. October 12.
- Morrison W. of Pile Marsh, Gloucestershire, coal merchant. [Dowling, Chew Magna, Somersetshire. October 15.
- MacLaurin D. of Watling street, warehouseman. [Atkinson, Castle street, Falcon square. October 22.
- Noel Thomas Hunsden, of North street, Brighthelmstone, linen draper. [Shepard, Bartlett's buildings, Holborn. July 9.
- Newall John, of Bristol, merchant. [Davis, Bristol. August 3.
- Nightingale Joshua, of Clayton street, Kennington, carpenter. [Hughes, Clifford's Inn. September 21.
- Orbell William, of Felsham, Suffolk, shopkeeper. [Pate, Bury St. Edmond's. July 6.
- Ogden Ralph, of Bottany, Lancashire. [Oldham, Manchester. August 10.
- Palmer Henry, of Mangotsfield, Gloucester, victualler. [Martin, Exchange, Bristol. September 7.
- Payne Edward, of Taunton, druggist. [Evill, Bath. September 10.
- Petford William, of Birmingham, malister. [Freese, Birmingham. September 14.
- Pringle Matthew, of Walworth, Surrey, flour factor. [Martin, Vintners' hall, Upper Thames street. September 28.
- Read Thomas, of Whitcomb street, Charing Cross, jeweller. [Pullen, Fore-street. July 6.
- Rodwell Thomas, of Piccadilly, bootmaker. [Derby, Great James street, Bedford row. July 6.
- Richardby James, jun. of Durham, joiner. [Maynard, Durham. July 23.
- Robertson David, of Bishopgate Without, London, tailor. [Beauran, Union street, Bishopsgate street. July 27.
- Richards Jos. of Prince's stairs, Rotherhithe, victualler. [Holloway, Chancery lane. August 6.
- Rolfe Jos. of Bream's buildings, Chancery lane, timber merchant. [Allingham, St. John's square. August 13.
- Rennell W. jun. of Teignmouth, Devonshire, shopkeeper. [Prideaux, Totness. August 13.
- Rose William, of Great Pulteney street, carver. [Dawne, Henrietta street, Covent Garden. September 14.
- Randall William, of Tooley street, ship chandler. [Cuppge, Queen street, Cheapside. September 14.
- Roundell Joseph, of Skipton, Yorkshire, grocer. [Carr, Skipton. September 21.



## *Bankrupts.*

Robinson Martin, and John Ibetson, of Drury lane, grocers. [Hurd, King's Bench Walk, Temple. October 19.

Smith James, of Sudbury Green. [Harrow, salesmen. July 2.

Scott Joseph, jun. of Wakefield, York, grocer. [Frost, Hull. July 9.

Smethurst James, and Mangnall James, Bolton, dimity and quilting manufacturers. [Knight, Manchester. July 13.

Smyth Henry, Thomas and John Lacelles, Mill lane, Tooley street, coopers.

[Gatty and Hadden, Angel court, Throgmorton street. July 13.

Smith James and Jeremiah Smith, of Myten, Kingston upon Hull, potters. [Pycard, Hull. July 16.

Star J. of Worcester, brandy merchant. [Price, Worcester. July 23.

Stone William, of Norwood common, hop merchant. [Mangnall, Warwick square, Newgate street. July 27.

Sibeland J. of Wimpole street, Cavenish square, tailor. [Smith, Robert street, Adelphi. July 6.

Smithson Rich. of Kingston upon Hull, innkeeper. [Ritson, Hull. July 30.

Smith William, of Basing lane, warehouseman. [Rutherford, Bartholemew close. August 3.

Scholefield J. of Cateaton street, warehouseman. [Lamb, Alderagate street. August 6.

Slaymaker J. of Red cross street, tallow chandler. [Vincent and Co. Bedford street, Bedford square. August 13.

Slater Thomas, of Leicester, grocer. [Rivington, Fenchurch street buildings, Fenchurch street. August 17.

Smith Richard, of Lutterworth, Leicestershire, mercer and draper. [Watson, Lutterworth. August 24.

Sutcliffe W. of Ovenden, Yorkshire, merchant. [Wilcock, Halifax. September 3.

Sutherland Peter, of Portsmouth, tailor. [Boswell, Gosport. September 14.

Sebastian James, of Willmot, Stamford, Lincoln, linen draper. [Wilde, Warwick square, Newgate street. September 17.

Scott Thomas, of Bethnell green, broker. [Hall, Castle court, Budge row. October 19.

Silvbrand J. of Spicer street, Spitalfields, colour manufacturer. [Williams and Co. Austin friars. October 22.

Stevens J. of Chester place, Lambeth, mariner. [Ware, Blackman street, Southwark. October 22.

Senate Edward, of Leicester place, dealer in medicines. [Birkett, Bond court, Walbrook. October 22.

Thurston Jeremiah, of Norwich, merchant tailor. [Barber, Norwich. July 6.

Tilyard George, of Wolton upon Thames, Surrey, plumber, painter, and glazier. [Agland, Gray's Inn Lane Terrace. July 6.

Townsend Edmund, of Maiden lane, Covent Garden, wine and cyder merchant.

[Williams and Sherwood, Austin Friars. July 9.

Taylor John, jun. of Framlingham, Suffolk, miller. [Clubbe, Framlingham. July 20.

Timms Samuel, of Ashby de la Zouch, Leicestershire, miller. [Smith, Ashby de la Zouch. July 27.

Thomas James, of Lightpill, and A. Bond, Stanley's End, Gloucestershire, clothiers. [Croom, Stroud, Gloucestershire. August 20.

Tripp Edward, of Barton upon Humber, joiner and carpenter. [Marris and Brown, Barton upon Humber. September 7.

Tonge C. of Nagg's head court, Gracechurch street, merchant. [Foulkes and Longdill, Holborn court, Gray's Inn. September 10.

Taylor James, of Newton Moss, Lancaster, cotton spinner. [Knight, Manchester. September 14.

## *Bankrupts.*

Tunnicliff Thomas, of Bromyard, Hereford, linen draper. [Foulkes and Higson, Manchester. September 21.

Travers William, and James Bate, of Warrington, Lancaster, grocers. [Fitchett, Warrington. September 28.

Tuck Thomas, of Church street, Bethnal green, flour dealer. [Scott, St. Mildred's court, Poultry. October 26.

Thomas John of St. James's place, tailor. [Newcomb, Vine street, Piccadilly. October 26.

Urquhart William, of Ratcliff cross, cooper. [Jones and Green, Salisbury square, Fleet street. July 20.

Vearty Bryan, of Kendal, Westmoreland, skinner. [Richardson and Fell, Kendal. October 26.

Wayne John, late of Brassington, Derby, butcher. [Swettenham, Wirksworth Ion, July 9.

Watts Edward, Lower Road, Rotherhithe, victualler. [Wright, Sherborn lane. July 13.

Williams John, of Llanlidan, Denbighshire, dealer in cattle. [Stratton, Shortditch, July 19.

Wild Joseph, of Royton, Lancashire, dealer. [Kay and Co. Manchester. July 16.

Watson Jonathan, of Manchester, cotton spinner. [Halstead and Co. Manchester. July 16.

Wood Joseph, of Bromley, Lancashire, cotton spinner. [Beardsworth and Co. Blackburn. July 29.

Wardell Thomas, of Darlington, Durham, innkeeper. [Clayton and Co. Newcastle upon Tyne. July 23.

Wing W. of Stamford, Lincolnshire, victualler. [Redifer, Stamford. August 6.

Winwood Edward and Samuel Thodey, of the Poultry, scotch factors. [Collins, Spital square. August 10.

Whitnall William, of Milton, Kent, miller. [Hinde, Milton. August 17.

Williams John, of Leigh, Lancashire, cabinet maker. [Throughton, Preston. August 24.

Wood Thomas, of Sculcoates, Yorkshire, dealer. [Martin, Hull. August 27.

Wilcocke S. H. of Liverpool, merchant. [Orred, Liverpool. September 3.

Wetherill W. and W. Wetherill, jun. of Bristol, merchants. [Cornish, Bristol. September 3.

Walker Rich. of Leicester, dealer. [Lawton, Leicester. September 3.

Willmore William, of Birmingham, factor. [Elkington, Temple street, Birmingham. September 21.

Watred J. Napier, of Birmingham, woollen draper. [Whately, Birmingham. October 8.

White John and William Fernihough, of Manchester, calico printers. [Johnson and Bailey, Manchester. October 19.

## BANKRUPTS,

*Declared in the London Gazette, from October 29, to  
December 29, 1805.*

[The Solicitors' Names and Dates of the Gazette, are preceded  
by a Crotchet.]

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Arbouin James, of Hart street, Crutched Friars, wine merchant. [Raine,  
Mark lane. November 2.

Aked George and Charles Young, of Glamford Briggs, Lincolnshire, corn  
merchants. [Nicholson, Glamford Briggs. November 2.

Adkins Joseph, of Wicker, Sheffield, cast ironfounder. [Shearwood, Sheffield.  
November 9.

Addison Thomas, of Preston, Lancashire, woollen draper. [Blanchard and  
Co. Preston. November 16.

Ares Thomas, of Queen street, Cheapside, dealer and chapman. [Dickson,  
Old Broad street. November 16.

Austin J. of Longdon upon Tern, Salep, miller. [Panting, Shrewsbury.  
December 27.

Bendelach Abraham, of James court, Bury street, St. Mary Axe, merchant.  
[Day, Martin's lane, Cannon street. November 2.

Bradburn Richard, of Wolverhampton, victualler. [Biddle, Wolverhampton.  
November 2.

Brewer James, of Richmond hill, victualler. [Shepeutt, Hart street, Blooms-  
bury. November 9.

Bowden John, of Clossop, Derby, cotton spinner. [Wetherell, Manchester.  
November 9.

Buckell Samuel the younger, of Peterborough, money scrivener. [Giles, Great  
Shire Lane. November 9.

Brownhead Wm. of Stamford, Lincolnshire, ironmonger [Jackson and Co.  
Stamford. November 22.

Barton John, of Clapham, carpenter. [Try, Rolls buildings, Fetter lane.  
November 16.

Bullock Stanley, of Tyldesley, Lancashire, calico printer. [Foulkes and Co.  
Manchester. November 19.

Baldock Tho. of Chatham hill, Kent, miller. [Cooper and Co. Southampton  
buildings, Chancery lane. November 26.

Baylis Stephen, of Ledbury, Herefordshire, baker. [Holbrook, Ledbury. De-  
cember 3.

Baylis William, of Ledbury, Herefordshire, baker. [Reece, Ledbury. Decem-  
ber 7.

Burrows Israel, of Milfield Yorkshire, corn dealer. [Sykes, Desbary. De-  
cember 7.

## *Bankrupts,*

- Bate Thomas, of Macclesfield, draper. [Barrett, Manchester. December 14.
- Brooke Robert Vaughan, of Hurcot, Kidderminster, paper manufacturer. [Wale, Worcester. December 17.
- Bell Wm. of Leeds, Yorkshire, grocer. [Bolland and Co. Leeds. December 24.
- Bate Thomas, of Macclesfield, Chester, draper. [Barrett, Manchester. December 29.
- Cotton Japheth, of Wolverhampton, scrivener. [Biddle, Wolverhampton. November 2.
- Clapton J. of Egerton, Kent, butcher. [Cooke, Maidstone. November 5.
- Crowther J. and J. Waston, of Manchester, cotton spinners. [Milne and Co. Manchester. November 5.
- Chatterton W. of Waltham, Lincolnshire, grocer. [Galland, Kingston upon Hull. November 5.
- Cockburn Alex. of Gray's Inn lane, sadler. [Windus, Broad street. November 12.
- Chorley John, of Liverpool, merchant. [Leigh, Liverpool. November 12.
- Chatterton Samuel, of Snaith, Yorkshire, grocer. [Bingley, Snaith. November 16.
- Colville John, of Cheapside, linen draper. [Scott, St. Mildred's court, Poultry. November 16.
- Croudson Thomas, of Wigan, Lancaster, innkeeper. [Brotherton, Wigan. November 23.
- Cox Edward, jun. of Sedgely, Stafford, victualler. [Spurrier, Birmingham. November 23.
- Calvert Robert, of Great Mary la Bonne street, sadler. [Bousfield, Bouverie street, Fleet street. November 23.
- Cummings Tho. of Kirkby Lonsdale, Westmoreland, spirit merchant. [Pickard and Co. Kirkby Lonsdale. November 25.
- Cockerill William, of Ludgate hill, linen draper. [Henson, Dorset street, Fleet street. November 30.
- Chalmers Francis, of Liverpool, broker. [Windle, John street, Bedford row. November 30.
- Cook Josiah, of New road, Mary la bonne, statuary and mason. [Greenwood, Manchester street, Manchester square. December 7.
- Coats Edward, of Horninglow, Staffordshire, common brewer. [Fowler, Burton upon Trent. December 7.
- Coltman William, of Long Acre, baker. [Collins and Wallen, Spital square. December 7.
- Coates Edward, Tho. Massey, and Jos. Hall, of Horninglow, Staffordshire, brewers. [Fowler, Burton upon Trent, and Messrs. Owen and Co. Bartlett's building's Holborn. December 17.
- Carr James, of Orford, Suffolk, innholder. [Turner, Yoxford. December 24.
- Clark Christopher, of Carlisle, mercer. [Pearson, Carlisle. December 24.
- Clark Wm. of Hythe, Kent, tailor. [Tournay, Hithe. December 24.
- Cooke, Henry and John Herbert of Birchin lane, merchants. [Thomas and Sons, Feu court, Fenchurch street. December 29.
- Deacon Benjamin, of Orange street, Bloomsbury square, pastry cook. [Townsend, Staple's Inn. November 2.
- Dyster J. of Oakhampton, Devonshire, woolstapler. [Colling, Oakhampton. November 5.
- Dickenson Wm. sen. T. Goodal, and Wm. Dickenson, jun. of the Poultry, bankers. [Adams, Old Jewry. November 19.

## *Bankrupts.*

Dickenson Wm. Thomas Goodall, Michael Goodall, and Wm. Dickenson, jun. of Birmingham, bankers. [Barker and Unett, or Mr. Whately, Birmingham. November 23.

Davis John, of Oxford, dealer. [Tomes, Oxford. November 30.

Davies Thomas, of Wheelock, Cheshire, victualler. [Groom, Audlem. December 21.

Ellis Joseph of Worcester, flax dresser. [Haden, Worcester. November 26.

England Wm. of Little Walsingham, Norfolk, shopkeeper. [Decker, Little Walsingham. December 17.

Ellis Thomas, of Preston, Lancashire, ironmonger. [Grimshaw and Co. Preston. December 24.

Furley William, of Duke street, Lincoln's Inn fields, gold beater. [Tebbut and Shuttleworth, Gray's Inn square. November 2.

Fairless M. of Bishopwearmouth, Durham, coal fitter. [Dunn, Durham. November 5.

Fletcher, James of Walbrook, London, merchant. [Price and Williams, Lincoln's Inn. November 9.

Ford Samuel, of Birmingham, merchant. [Bedford and Gem, Birmingham. November 9.

Fisher S. M. of Gravesend, linen draper. [Vandercom and Co. Bush lane, Cannon street, November 19.

Palmer Thomas, of Goodge street, St. Pancras, tailor. [Pinero, Charles street. November 23.

Fountain Benj. of Hounslow, butcher. [Wild, Warwick square, Newgate street. November 26.

Fogg, Ralph and Thomas Cantrell of Manchester, cotton manufacturers. [Kay and Renshaw, Manchester. December 7.

Farrar Wm. of Salford, Lancaster, plumber. [Morgan, Fountain street, Manchester. December 14.

Fuller Samuel, of Cambridge, draper. [Druce, Billiter square. December 24.

Goom Richard, of Old street, size maker. [Drew, Bermondsey street, Southwark. November 2.

Grimes George, of Great Warner street, Cold bath square, linen draper. [Langley, Plumbtree street, Bloomsbury. November 9.

Goodwin Wm. of King's Arms stairs, Westminster bridge road, timber merchant. [Allan, Carlisle street. November 12.

Green William the Younger, of Maidstone, dealer. [Scudamore, Maidstone. November 16.

Graves Wm. of Lloyd's Coffehouse, merchant. [Glenn, Garlick hill, Bow lane. November 23.

Giffard James, of Shepherd street, Oxford street, coal merchant. [Bromley and Co. Holborn court, Gray's Inn. November 26.

Gibbs William, of Newport, Isle of Wight, hackneyman. [Gilbert, Newport. December 7.

Green John, of Burton in Lonsdale, Yorkshire, cotton spinner. [Woodburn, Manchester. December 10.

Gandon Peter, of Wentworth street, Whitechapel, cooper. [Grove, Villiers street, Strand. December 14.

Gill Sam. of Horbury, Yorkshire, tallow chandler. [Scholesfield, Horbury. December 17.

## *Bankrupts.*

- Hoeven Dirk Jean Vander, of Bury court, St. Mary Axe, merchant. [Ellison and Co. White Hart court, Lombard street. November 5.
- Hudson Charles, of Lane End, Stafford, sadler. [Parker, Stafford. November 9.
- Hudson Joseph, of Sun street, Bishopsgate street, tobacconist. [Hughes, Clifford's Inn. November 12.
- Henshall John, of Manchester, innkeeper. [Law, Pall Mall, Manchester. November 16.
- Harrison Wm. of Isleworth, merchant. [Shepherd and Co. Bedford row. November 19.
- Howard Thomas and William Howard, of Manchester, soap boilers. [Crumph and Lodge, Liverpool. November 23.
- Hadfield Thomas and William Hadfield, of Wakefield, York, dealers. [Carr, Wakefield. November 23.
- Helems Christopher Watson, of Plymouth, linen draper. [Cooke, Bristol. November 23.
- Hickinbotham Sam. of Brixton hill, Surrey, miller. [Murphy, Bouverie street, Fleet street. November 26.
- Hale Francis of Leeds, Yorkshire, merchant. [Coupland, Leeds. November 26.
- Hemsley Henry, of Great Coram street, Russel square, baker. [Vincent and Co. Bedford square, Bedford street. December 10.
- Haward Richard, of Ashford, Kent, coachmaker. [Jackson, Garden court, Temple. December 24.
- Haigh John, of Marsden, Huddersfield, cotton manufacturer. [Stables, Huddersfield. December 29.
- Irving Wm. of Liverpool, liquor merchant. [Phillips, Liverpool. November 26.
- Izod William, of Queen street, Cheapside, warehouseman. [Nicholls, Tavistock place, Tavistock square. November 30.
- Ivey William, of Titchfield street, St. Mary le Bonne, taylor. [Davison, Warren street, Fitzroy square. December 29.
- Jones Tho. of Gloucester, horse dealer. [Ward, Gloucester. October 29.
- Jackson Charles, of Down Ampney, Gloucester, linen draper. [Ward, Farlington, Berks. November 16.
- Jones James Biow, of New Bond street, fruiterer. [Sarel, Berkley square. December 14.
- Kettle George, of Birmingham, toy maker. [Webb and Tyndall, Birmingham. November 23.
- Kendall Samuel, of Liverpool, timber merchant. [Barnswell and Stephenson, Liverpool. November 30.
- Lovell Thomas, of Shoreditch, baker. [Webb, St. Thomas street, Southwark. November 2.
- Lock Henry, of Northampton buildings, Clerkenwell, watch manufacturer. [Denton, Field's court, Gray's Inn. November 12.
- Levin Moses Marcus, of Leadenhall street, merchant. [Mangoall, Warwick square, November 16.
- Leech Wm. of Saltford, Lancashire, brewer. [Duckworth and Co. Manchester. November 26.

## *Bankrupts.*

- Lowther Robert, of Sheffield, Yorkshire, and Throgmorton street, London, merchant. [Thompson, Sheffield. November 26.
- Levy Michael, of Rosemary lane, victualler. [Isaacs, Great George's street, Minories. December 14.
- Morgan Richard, of Aberdare, Glamorganshire, apothecary. [Morgan, Neath. November 2.
- Moorfoot Richard, of Manchester, joiner. [Morgan, Manchester. November 2.
- Morgan J. of Prince's street, Barbican, victualler. [Hughes, Clifford's Inn. November 5.
- Merryweather E. of Manchester, cotton spinner. [Cheshyre and Co. Manchester. November 5.
- Miller Tho. of Ilford, Essex, dealer. [Vandercom and Co. Bush lane, Cannon street. November 12.
- Morr Robert, of Lancaster, merchant. [Mason and Co. Lancaster. November 12.
- Mohun Huntley, of Bishop Wearmouth, Durham, chymist and druggist. [Parker, Bishop Wearmouth. November 16.
- Morgan John, of New Compton street, St. Giles's, victualler. [Surr, Chelsea. November 16.
- Mellor John, Sheffield, Yorkshire, rope maker. [Bigg, Hatton garden. November 19.
- Mockitt Thomas of Deal, miller. [Browns and Gotoled, Norfolk street. November 30.
- Moses Jacob, of Newmarket street, Wapping, slopeller. [Isaacs, Great George's street, Minories. November 30.
- Mercer John of Uxbridge, and Nicholas Mercer, Chatham place, mealmen. [Luggen and Smith, Basinghall street. November 30.
- Marsdens William, of Manchester, merchant. [Halsted and Amsworth, Manchester. November 30.
- Macpherson Wm. of Maiden lane, straw hat manufacturer. [Wild, Warwick square, Newgate street. December 3.
- Marsh Absalom, of Aldgate, jeweller. [Loddington and Co. Secondaries Office, King's Bench walks. December 10.
- Milner Gamaliel, of Thurlston, York, and Daniel Whitaker, Manchester, cotton manufacturers. [Edge, Manchester. December 14.
- Nichols John, of Earsham, Norfolk, butcher. [Kingsbury, Bungay. November 12.
- Nicholson Henry, of Bishopsgate street, silk mercer. [Collins and Co. Spital square. December 27.
- Osler Benjamin, of Falmouth, merchant. [Young, Falmouth. November 16.
- O'Hagen George, of Buckingham, wine merchant. [Smith and Seave, Great St. Helens, Bishopsgate street. November 30.
- Ormond George, of Manchester, dyer. [Foulkes and Co. Manchester. December 17.
- Peake Stephen, of Ramsgate, carpenter. [Sawkins and Dering, Margate. November 9.
- Patrick Thomas, of King street, Covent garden, optician. [Edmunds and Co. Lincoln's Inn. November 12.
- Perrin Tho. of Chichester, innkeeper. [Daly, Chichester. November 12.

## *Bankrupts.*

- Pier** Joseph, of Marsh Ditton, Surrey, brewer. [Clarkson, Essex street, Strand. November 12.  
**Pier** John, of Lower Thames street, fishmonger. [Edis, Clement's lane, Lombard street. November 19.  
**Piston** Robert and Henry Mauden, of Liverpool, merchants. [Blackstock, Liverpool. November 23.  
**Putt** Joseph, of Yarmouth, upholsterer.  
**Peterson** James, of Red Lion street, upholsterer. [England, Old Broad street, Royal Exchange. November 30.  
**Reid** Joseph, of Redborough, Gloucestershire, clothier. [Washen, Stroud. December 2.  
**Redington** Richard, of Leonard square, Shoreditch, baker. [Crawford, Cranven buildings, City road. December 21.  
**Reid** George, William and William Rose, of Bow bridge, Redborough, dyers. [Newman, Stroud. December 21.  
  
**Redhall** Henry, of Bristol, silk mercer. [Martin, Bristol. November 9.  
**Redgate** Benjamin, of Manningham, York, clothier. [Crosley, Bradford. November 23.  
**Ree** Thomas, of High street, Lambeth, currier. [Gunning, Clement's Inn. November 23.  
**Reithorn** Wm. of Sharpley, Lancashire, dealer in cattle. [Hulton, Bolton. December 3.  
**Reid** Wm. sen. of Manningtree, Essex, innkeeper. [Jackman, Ipswich. December 19.  
**Reid** John, of Drury lane, grocer. [Wild, Warwick square, Newgate street. December 14.  
**Reid** Wm. jun. of Newcastle upon Tyne, vazier. [Harvey, Newcastle upon Tyne. December 14.  
**Reid** P. G. C. of Liverpool, merchant. [Cheek, Manchester. December 14.  
**Reid** Thomas, and George Mackey of Greenwich, ship owners. [Jones and Green, Salisbury square, Fleet street. December 21.  
**Reid** William Henry, Michael Edwin Fell, and James Entwistle, of Manchester, cotton spinners. [Duckworth and Chippendale, Manchester. December 21.  
  
**Reid** John, of Almondsbury, Yorkshire, clothier. [Whiteley, Halifax. November 2.  
**Reid** Abraham, of Ratcliffe cross, coal merchant. [Martin, Vintner's Hall, Upper Thames street. November 2.  
**Reid** Thomas, of Wetherby, York, linen draper. [Edmunds and Son, Lincoln's Inn. November 2.  
**Reid** J. of Worcester, hop merchant. [Willis, Worcester. November 5.  
**Reid** William, of Birmingham, toy maker. [Elkington, Birmingham. November 9.  
**Reid** Andrew, of Tokenhouse yard, Blackwell, hall factor. [Meredith and Co. New square, Lincoln's Inn. November 12.  
**Reid** Richard, of Broadstairs, Isle of Thanet, butcher. [Sawkins and Denby, Margate. November 16.  
**Reid** Thos. of Fish street, Red Lion square, plaisterer. [Taylor, Took's street, Cursitor street. November 19.  
**Reid** Edw. of Liverpool, merchant. [Keightley, Liverpool. November 19.  
**Reid** Alexander, of Selby, York, shipwright. [Eaton, Selby. November 23.  
**Reid** John, of Manchester, cotton merchant. [Johnson and Co. Manchester. November 26.



## *Banrupts.*

Strong J. of Wilmot square, dealer. [Holmes, Mark lane, London. No-  
ber 5.  
Smith William, of Globe place, Lambeth, corn chandler. [Ware, Blackman  
street, Borough. November 30.  
Sims William, of Newgate market, carcase butcher. [Wild, Warwick square,  
Newgate street. December 7.  
Simpson Thomas and Nottingham Simpson, of Northallerton, merchants. [See  
Crown court, Southwark. December 21.  
Scrivens Thomas, of Cheapside, tavern keeper. [Reardon, Corbett street,  
Gracechurch street. December 24.  
Siddall Samuel, of Hurst, Lancashire, cotton manufacturer. [Gibbon, Ash, on  
upon Line. December 24.  
Shipton John, of Yozall, Staffordshire, vintner. [Jyatt, Litchfield. Decem-  
ber 29.  
Stott Abraham, of Gooden lane, Bury, Lancashire; Robert Fitton, S. o  
Threads, Middleton; Richard Bowker, Gooden lane, Bury; Robert B. o  
worth, Littleborough; and Robert Hartley, Siddal Moor, cotton manu-  
facturers. [Milne, Rochdale. December 29.  
Trudgate J. of John's mews, Little James street, Bedford row, stable & car.  
[Hinrich: Palgrave place, Temple Bar. October 29.  
Thomas Joseph, of Broad street buildings, merchant. [Sherwood and P. o  
Catherine square, Southwark. November 2.  
Teasdale J. of Reading, linen draper. [Maddock and Co. New square, Lin-  
coln's Inn. November 5.  
Twigg Charles, of Lawrence Poultry lane, merchant. [Williams, C. o  
street, Holborn. November 16.  
Tiger Ann, of Beverly, York, ironmanger. [Duesberry, Beverley. No-  
ber 16.  
Tate James, of Ashford, Kent, grocer. [Palmer, Tomlinsons, and Thon.  
Cophall court, Throgmorton street. November 23.  
Tankard John, of Birmingham, factor. [Maudsley, Birmingham. Novem-  
ber 26.  
Tutlock John, jun. of Savage gardens, broker. [Rivington, Fenchurch bu-  
ings, Fenchurch street. December 3.  
Thomas John, of Manchester, cotton spinner, [Kay and Co. Manchester.  
December 17.

Waters Benjamin, of Wormwood street, broker, [Swain and Stephens, 118  
Jewry. November 2.  
White Matthew, of Finsbury square, Middlesex, merchant. [Atcheson and  
Morgan, Austin Friars. November 2.  
Warne W. of Hackney road, watchmaker. [Dove and Co. Elm court, Tem-  
ple. November 5.  
Whittenbury Ebenezer, of Liverpool, merchant. [Orred, Liverpool. Novem-  
ber 2.  
Ward Henry, of Curtain road, Shoreditch, apothecary. [Taylor, Old street  
road. November 12.  
Wilson Robert, of Helmsley, Yorkshire, innkeeper. [Petch, Kerby moor, York.  
November 16.  
Wallis James, of Paternoster row, bookseller. [Milton and Pownall, Knight  
Rider street. Doctor's Commons. November 16.  
White Tho. of Broad stairs, Isle of Thanet, ship builder. [Dennett's and  
King's arms yard, Coleman street. November 19.  
Watson Jacob, of Eton, Lancashire, cotton spinner. [Halsall and Co. Man-  
chester. November 19.

### *Bankrupts.*

- Wright Jonathan, of Leadenhall market, butcher. [Wilkinson, White Lion street, Norton Falgate. November 22.
- Wright Sinclair, of White horse lane, Whitechapel, merchant. [Sarel, Surrey street, Strand. November 30.
- Worley Charles, of Wood street, Cheapside, warehouseman. [Kibblewhite and Co. Gray's Inn place. December 3.
- Wall Wm. Allen, of Mount garden, Lambeth, varnish maker. [Willey, Basinghall street. December 24.
- Wright John, of Newgate street, grocer. [Palmer, Tomlinsons, and Thomson, Copthall court, Throgmorton street. December 29.
- Young Samuel, of North Audley street, Grosvenor square, surgeon. [Vincent and Upstone, Bedford street, Bedford square. December 7
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